

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for the) Docket No. 98-AFC-3
DELTA ENERGY CENTER)
(CALPINE CORPORATION)
AND BECHTEL ENTERPRISES,)
INC.))
)
_____)

DELTA DIABLO SANITATION DISTRICT
DISTRICT BOARD ROOM
2500 ANTIOCH-PITTSBURG HIGHWAY
ANTIOCH, CALIFORNIA

WEDNESDAY, NOVEMBER 3, 1999
6:00 P. M.

Reported by:
Debi Baker
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Chairman
Presiding Member

Robert Pernell, Commissioner

STAFF PRESENT

Susan Gefter, Hearing Officer

Major Williams, Jr., Hearing Officer

Cynthia Praul, Adviser to Chairman Keese

Jennifer Tachera, Staff Counsel

Paul Richins, Project Manager

REPRESENTING THE APPLICANT

Jeffrey Harris
Ellison and Schneider

Susan Strachan
Environmental Project Manager
Calpine

Douglas W. Buchanan
Development Manager
Delta Energy Center

INTERVENORS PRESENT

Paulette Lagana
CAP-IT

Jack R. Hall
City of Antioch

Randy Jerome
City of Pittsburg

Avan Gangapuram
City of Pittsburg

ALSO PRESENT

Richard Denton
Contra Costa Water District

Gregory Baatrup
Delta Diablo Sanitation District

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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P R O C E E D I N G S

CHAIRMAN KEESE: We'll call the meeting to order. We're continuing to conduct evidentiary hearings on Calpine and Bechtel's application for certification for the Delta Energy Center. This hearing is being conducted in the Pittsburgh area for the convenience of local intervenors and residents who are interested in this proceeding.

Before we begin we would like to introduce the Committee and then ask the parties to identify themselves for the record. We will also ask the individual members of the public who are attending this hearing to identify themselves even if you are not affiliated with an intervenor or organization.

I am Bill Keese, Chairman of the Energy Commission and Presiding Officer in this hearing. Commissioner Robert Pernel is here who is a member assisting in this hearing. We are the Committee.

Cynthia Praul is my advisor. Rosalia Shapiro Roberts is not here this evening. Our Hearing Officers are Susan Gefter and Major Williams, on the fair right.

For the Applicants, Mr. Ellison. Is Mr.

1 -- Jeff Harris, counsel would you introduce
2 your --

3 MR. HARRIS: Thank you. I think I'll
4 let everyone introduce themselves. I'm Jeff
5 Harris with Ellison and Schneider and I'm outside
6 counsel with the Calpine/Bechtel.

7 MS. STRACHAN: I'm Susan Strachan, I'm
8 the Environmental Project Manager for the Delta
9 Energy Center.

10 MR. BUCHANAN: And I'm Doug Buchanan,
11 I'm the Development Manager for Delta.

12 CHAIRMAN KEESE: Paul Richins of staff
13 is here. Paul would introduce who else you have?

14 PROJECT MANAGER RICHINS: My name is
15 Paul Richins. I'm Project Manager for the Energy
16 Commissioner staff. And I'll let Jennifer
17 introduce herself, but she's pinch hitting for
18 Dick Ratliff this evening.

19 STAFF COUNSEL TACHERA: Jennifer
20 Tachera, CEC legal staff.

21 CHAIRMAN KEESE: Thank you. For the
22 intervenors, CURE.

23 CAP-IT, Paulette Lagana? Is Paulette
24 here?

25 The City of Antioch?

1 MR. HALL: Jack Hall, City of Antioch.

2 CHAIRMAN KEESE: Thank you.

3 City of Pittsburg?

4 MR. JEROME: Randy Jerome, City of
5 Pittsburg, with Avan Gangapuram, also with the
6 City.

7 CHAIRMAN KEESE: Thank you.

8 Southern Energy?

9 Community Health First?

10 Californians for Renewable Energy?

11 And in the agency area, we have Delta
12 Diablo Waste Water Facility.

13 MR. BAATRUP: I'm Greg Baatrup with
14 Delta Diablo.

15 CHAIRMAN KEESE: Thank you.

16 Our Public Adviser is not here, but
17 available for those who would like.

18 Would any of the members of the public
19 care to introduce themselves at this time? This
20 won't preclude you from speaking later, if you
21 don't, but you're very welcome to introduce
22 yourself if you'd like.

23 MR. DENTON: I'm Richard Denton, Contra
24 Costa Water District.

25 CHAIRMAN KEESE: Thank you, I should

1 have had you on the other list.

2 All right. Then I'll ask Susan Gefter
3 to introduce the schedule.

4 Then I'll ask Susan Gefter to introduce
5 the schedule at this time.

6 HEARING OFFICER GEFTER: And before we
7 proceed, are there any other agencies represented
8 here tonight that we haven't called on?

9 Okay. On October 7th, the Committee
10 issued a revised evidentiary hearing schedule,
11 that scheduled today's hearing on the topics of
12 biological resources and soil and water resources.
13 On October 26th, the Committee issued a second
14 revised evidentiary hearing schedule that canceled
15 the hearing previously scheduled on November 10th
16 and scheduled a new hearing date on November 18th.

17 The topics for November 18th are socio-
18 economics, which includes environmental justice
19 and also the topics of air quality and public
20 health. The hearing on November 18th will begin
21 at five p.m. I just want everyone to note that,
22 to allow sufficient time for all the parties to
23 present their testimony that evening.

24 The final determination of compliance
25 was docketed on October 25th. Staff's and

1 applicant's supplemental testimony on socio-
2 economics, air quality and public health is due
3 November 8th. Based on requests from the
4 intervenors staff has a scheduled a public
5 workshop in Pittsburg on the FDOC. That workshop
6 will be held on November 8th.

7 The intervenor's testimony on socio-
8 economics, air quality and public health is due
9 November 12th. Rebuttal testimony from all the
10 parties will be due November 15th. Briefs on the
11 topics here today are due November 11th. Briefs
12 on the topics heard November 18th are due November
13 24th.

14 The evidentiary hearings are formal in
15 nature and they're similar to court proceedings.
16 The purpose of the hearings is to receive
17 evidence, including testimony and to establish the
18 factual record necessary to reach a decision in
19 this case.

20 The Applicant has the burden of
21 presenting sufficient substantial evidence to
22 support the findings and conclusions required for
23 certification of the proposed facility. The order
24 of testimony that will be taken today is as
25 follows.

1 For each topic, first the Applicant will
2 present its case, then staff and then the
3 intervenors and then we'd heard -- I understand
4 that the Delta Diablo will be sponsored, I believe
5 by staff. We will address the topics and the
6 sequence contained in the revised scheduling order
7 and first we will hear testimony on biology and
8 then we'll hear testimony on soil and water
9 resources.

10 The witnesses will testify under oath or
11 affirmation. During the hearings a party
12 sponsoring a witness should establish the witness'
13 qualifications and ask the witness to summarize
14 the prepared testimony. Relevant exhibits should
15 be offered into evidence at that time.

16 At the conclusion of the witness' direct
17 testimony, the Committee will provide the other
18 parties an opportunity for cross examination,
19 followed by redirect and recross, as appropriate.

20 Multiple witnesses may testify as a
21 panel and the Committee may also question the
22 witnesses. At the conclusion of each topic area
23 we invite members of the public to offer unsworn
24 public comment. Public comment is not testimony,
25 but it may be used to explain evidence in the

1 record.

2 Are there any questions about the
3 process at this point?

4 The Committee has distributed a current
5 version of the exhibit list to the parties and we
6 want to do a little housekeeping at this point and
7 if there are any exhibits that the parties wish to
8 identify or move in evidence at this time that
9 we've already talked about at previous hearings,
10 we'd like to hear about that now.

11 MR. HARRIS: Susan, just a question. I
12 wasn't here for the last hearing. The Exhibit 31,
13 I think it was marked and identified, but I'm not
14 sure it was actually moved into evidence and I'm
15 basing that on my review of the transcript, which
16 I didn't bring with me, of course.

17 So you may want to move that into
18 evidence. It was identified as 31, but I don't
19 think it was actually admitted.

20 HEARING OFFICER GEFTER: All right.
21 This was a letter from the City of Pittsburg,
22 dated August 23rd to Project Manager Paul Richins.
23 It was sponsored by the City of Pittsburg. We can
24 check the transcript and at this point we'll admit
25 it into evidence and change the date if it wasn't

1 already admitted on the 13th. And we'll look into
2 that.

3 (Thereupon the above-referenced document
4 marked as Exhibit 31 was admitted into
5 evidence.)

6 HEARING OFFICER GEFTER: Any other
7 exhibits that need to be corrected from any of the
8 parties?

9 This evening I expect there'll be a
10 number of exhibits that will be identified and
11 moved into evidence and we should do that
12 according to the topic to which they're relevant.

13 Does any party wish to make changes to
14 the list of witnesses that we have listed on our
15 revised schedule?

16 MR. HARRIS: Are you speaking just for
17 the hearing tonight, Susan, or for tonight and the
18 second hearing on the 18th?

19 HEARING OFFICER GEFTER: We're talking
20 about tonight.

21 MR. HARRIS: Okay. Susan Strachan will
22 be sponsoring our soils testimony for John Dickey
23 and I think that's our only change.

24 HEARING OFFICER GEFTER: Okay. If there
25 are no other questions, we will proceed with the

1 hearing on biological resources.

2 Mr. Williams will serve as the Hearing
3 Officer on the topic of biological resources and I
4 will remind the parties that all the witnesses
5 must be sworn by the court reporter.

6 HEARING OFFICER WILLIAMS: Are the
7 parties ready to proceed?

8 MR. HARRIS: Yes, we are.

9 Whereupon

10 DEBRA CROWE
11 was called as a witness and having been first duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HARRIS:

15 Q Would you state your name for the
16 record, please?

17 A Debra Crowe.

18 Q And which subject matter testimony are
19 you here to sponsor this evening?

20 A Biological resources.

21 Q Specifically which documents are you
22 sponsoring as part of your testimony tonight?

23 A The application for certification, a
24 wetlands delineation report and Department of the
25 Army permit application for the 404 permit for

1 wetland impacts, a draft California streambed
2 alteration agreement notification, the vernal pool
3 fairy shrimp or crustacean presence-absence survey
4 report required by the Fish and Wildlife Service
5 for conducting surveys for fairy shrimps, and the
6 biological assessment for the project that was
7 submitted to the Fish and Wildlife Service and
8 that's it.

9 Q Are these the eight items that are
10 identified as prior filings in your testimony?

11 A Yes.

12 HEARING OFFICER WILLIAMS: Before you
13 proceed, do you have copies of those documents
14 that we could distribute to staff and also we need
15 copies to look at here.

16 MR. HARRIS: Just for clarification,
17 these items are all part of the administrative
18 record and they've all been docketed. Some of
19 them have already been moved into evidence and
20 we'll go through that list as we get through

21 HEARING OFFICER WILLIAMS: Oh, that
22 would be helpful.

23 (Thereupon a recess was taken.)

24 HEARING OFFICER WILLIAMS: We're back on
25 the record. I believe Mr. Hawkins came in during

1 our break, Community Health First. Mr. Hawkins,
2 would you identify yourself for the record,
3 please, that you're here.

4 MR. HAWKINS: My name is Joe Hawkins.
5 I'm going by Community Health First.

6 HEARING OFFICER WILLIAMS: Thank you.

7 It wasn't clear before the break, but
8 apparently all the exhibits that Ms. Crowe will be
9 using are already in the record. We just need to
10 identify them as her testimony proceeds, so that
11 we'll be able to follow along.

12 MR. HARRIS: What I'm going to have her
13 do is essentially certify that she doesn't have
14 any changes or corrections and then we'll go
15 through those one by one. I'll reference the
16 exhibit numbers on the existing list to make sure
17 we're all on the same page.

18 So, shall I proceed?

19 HEARING OFFICER WILLIAMS: That's fine.

20 BY MR. HARRIS:

21 Q Now, Debra, let me ask you, were these
22 documents prepared either by you or at your
23 direction?

24 A Yes.

25 Q And based upon your review of this

1 testimony, are the facts true to the best of your
2 knowledge?

3 A Yes.

4 Q Do you have any changes or corrections
5 to these documents?

6 A No.

7 Q And do you adopt them as your testimony
8 today?

9 A Yes.

10 MR. HARRIS: Now I'd like to move these
11 documents into evidence if we can.

12 If you take a look at the prior filing
13 sections of Debra Crow's biological resources
14 testimony, I'll move down the list and identify
15 the exhibit number relevant to that particular
16 document.

17 Section 8.2, the first document of the
18 AFC is part of Exhibit 2 and I understand we'll be
19 moving that entire document into the record at the
20 last hearing.

21 AFC appendix 8.2 is the same story.
22 It'll be moved in its entirety as part of the last
23 hearing. The third document, response to CEC data
24 request numbers one through nine is listed as
25 Exhibit 6 on the exhibit list. That was moved

1 into evidence on the fifth.

2 Item number 4, Department of Army Permit
3 Application for the Delta Energy Center is part of
4 Exhibit 14. That has not been moved into evidence
5 and so at this time, if it's appropriate I would
6 like -- do you want me to move these individually
7 Susan or do you want me at the end to move them
8 all in?

9 HEARING OFFICER WILLIAMS: You can move
10 them in at the end of her testimony.

11 MR. HARRIS: Okay, thanks.

12 The fifth item, the California
13 Department of Fish and Game Streambed Alteration
14 Agreement, that's Exhibit Number 17. Again, that
15 one has not been moved into evidence yet.

16 The sixth item, 1998-'99 vernal pool
17 studies, is Exhibit Number 13. Again, that needs
18 to be moved into evidence.

19 The seventh item, Biological Assessment
20 for the Delta Energy Center is Exhibit Number 14
21 and that will need to be moved in.

22 And the eighth item, the Wetlands
23 Delineation Report is Item 8 on the Exhibit list.
24 I do want to note one correction on the exhibit
25 list, if I can. The exhibit list has item number

1 eight listed as a draft document. That's actually
2 a final document, so if we could make that change
3 on the exhibit list, that would be fine.

4 And if you want me to move them into
5 evidence now, I'd be glad to do that, or if you'd
6 like Ms. Crowe to testify first, whichever you
7 prefer.

8 HEARING OFFICER WILLIAMS: I think we'll
9 hear her testimony first and we'll do it at the
10 end.

11 MR. HARRIS: Okay, good.

12 Q All right, Debra, now that we've gotten
13 to the fun stuff, if you could take a moment and
14 just summarize for the Committee your testimony?

15 A Okay.

16 Well, when I did the analysis for this
17 project I focused on the open areas, the habitat
18 areas on the site, on the gas line and
19 transmission line and focused on habitat
20 suitability for special status species for certain
21 endangered species.

22 I came out and surveyed every two weeks
23 from December through April, December 8th, 1998
24 through April of 1999. And I can go through the
25 different habitat types, if you like, and what was

1 down there and so forth?

2 HEARING OFFICER WILLIAMS: Sure, why
3 don't you summarize that for us.

4 THE WITNESS: The power plant site
5 itself is on an open grassland area just west of
6 Delta Diablo Sanitation District here, and this
7 grassland area has a lot of -- supports small
8 mammals that are prey species for Coyotes, foxes.
9 And it has one small seasonal wetland on the site
10 that has a vernal pool with fairy shrimp in it,
11 which is a threatened species.

12 The gas pipeline extends east from the
13 site and follows the Burlington Northern Santa Fe
14 Railroad tracks. It's within the right of way,
15 but most of the habitat there is dirt access road
16 along the railroad tracks.

17 The gas pipeline was designed after
18 finding out that there was a special set of
19 species up here in this Dow wetland preserve, the
20 salt marsh harvest mouse. The gas pipeline was
21 then designed to go underneath with a horizontal
22 directional drill construction method, which will
23 avoid all of that habitat.

24 Further down, you can't see it on this
25 picture, but it also goes past the Antioch Dunes

1 National Wildlife Refuge and in that area it will
2 be open trenched, but will avoid -- I mean it will
3 be outside of the refuge and will avoid any kind
4 of habitat. We've done surveys out there for
5 special status plants with the wreckage manager
6 and we did not find any.

7 And for the transmission line it crosses
8 Dowest Slough here, which it will span, it won't
9 impact that at all. And it's above ground for
10 part of the way and then is underground through
11 the City of Pittsburg.

12 The above ground portion could increase
13 the potential for bird collisions with the wires.
14 The ways we have mitigated for impacts is to
15 monitor the transmission lines for collisions. We
16 will be doing studies on an annual basis, probably
17 four times a year and report back to the Energy
18 Commission on that to determine if we need to add
19 any kind of modifiers or bird flight diverters on
20 the top of the lines.

21 For the loss of this one small .16 acre
22 seasonal wetland, the threatened vernal pool fairy
23 shrimp will be mitigating in an off-site
24 mitigation bank or vernal pool trust fund with the
25 Nature Conservancy. And that follows the

1 biological opinion that is issued by the Fish and
2 Wildlife Service. It's a draft right now. We
3 have a copy of that and it should be final within
4 the next few days, it's going through signature.

5 Then the mitigation to avoid the Dow
6 wetland preserve is doing the directional drill.

7 We're also doing worker environmental
8 awareness training for all workers that will be on
9 the project. And we have a site monitor, a
10 biological monitor that will be on site during
11 construction near the Antioch Dunes Refuge, in the
12 Dow wetland preserve area.

13 The gas pipeline is also going to be
14 impacting some vernal pool -- or versatile fairy
15 shrimp, they're non-listed fairy shrimp, along
16 here. And Calpine/Bechtel is going to salvage
17 those shrimp, even though they're not listed,
18 salvage the top soil and replace it, once the
19 pipeline is there.

20 We're doing preconstruction surveys for
21 nesting birds that might be in some of the trees
22 along the Dow wetland preserve. And the bird
23 collision monitoring and that's it.

24 BY MR. HARRIS:

25 Q I just want to highlight a couple of

1 things. Back to the seasonal wetland, you said is
2 -- how big is that wetland on site?

3 A .16 acre.

4 Q And it's my understanding that there was
5 some cysts found that couldn't be identified
6 positively, is that correct?

7 A Right.

8 Q Tell me a little bit more about that
9 identification process?

10 A When we do the surveys for vernal pool
11 fairy shrimp, we do it during the wet season and
12 then we have separate surveys during the dry
13 season. The wet season we are -- is from November
14 through April and that's when these little ponds
15 fill up with water and we actually take nets and
16 scoop it through the water and try to catch any
17 shrimp.

18 The one on the site did not fill up with
19 water long enough this last year, 1999, to catch
20 the shrimp, so we had to collect the little eggs
21 of the shrimp, which is the cyst that he's talking
22 about. And a specialist had to identify them
23 under an electron microscope.

24 He found that these shrimp cysts are
25 possibly hybrids of the listed species and a non-

1 listed species. Calpine/Bechtel is assuming that
2 they are the listed fairly shrimp species and
3 they're going to mitigate for them.

4 Q Just so I'm clear on that point, the
5 scientific results were indefinite, but in light
6 of that indefinite result, Calpine/Bechtel is
7 going to mitigate as if they were the threatened
8 species?

9 A Yes.

10 Q Okay, thank you. One other thing I want
11 to highlight too, is the horizontal directional
12 drilling. You went over that fairly quickly. Can
13 you explain how that technique works and how it
14 avoids impacts?

15 A Well, they set up a horizontal
16 directional drill pad about 150 feet by 100 feet
17 wide on upland areas or disturbed areas. They set
18 up their equipment there and then they use a pilot
19 drill bit to go underneath sensitive areas and
20 come up on the other end at another 100 by 150
21 foot pad.

22 Q So this methodology is used as opposed
23 to what other methods?

24 A To digging a trench through the
25 habitats.

1 Q Okay. So by using the HDD method you
2 avoid trenching and actually go underneath the
3 resource?

4 A Yes.

5 Q And there are no impacts associated with
6 that?

7 A Right. There's also less disturbance
8 and permitting requirements when you do that.

9 Q Good. Let me ask you now, have you had
10 a chance to review the final staff assessment?

11 A Yes.

12 Q And have you reviewed the conditions of
13 certifications set forth in there?

14 A Yes.

15 Q And do you find those conditions of
16 certification acceptable?

17 A Yes.

18 MR. HARRIS: Okay. I have no more
19 questions for the witness and would ask if I can
20 move the documents into evidence at this point?

21 HEARING OFFICER WILLIAMS: Before you do
22 that, has Ms. Crowe testified previously in this
23 proceeding, something that I missed?

24 MR. HARRIS: Not in this proceeding --

25 THE WITNESS: No.

1 MR. HARRIS: -- you've testified before
2 the Commission before?

3 THE WITNESS: For the Sutter Power Plant
4 Project.

5 MR. HARRIS: She has in previous
6 proceedings testified.

7 HEARING OFFICER WILLIAMS: Could you
8 just have her give a brief background of her
9 qualifications for the record please?

10 MR. HARRIS: Yeah, her qualifications
11 were attached to her testimony, but, if you could,
12 Debra, just briefly summarize your qualifications?

13 THE WITNESS: I've got a Bachelor's of
14 Science in environmental biology and management.
15 I've been working out here on this project for a
16 year and a half, since March of 1998. I have been
17 working as a biologist for seven years.

18 MR. HARRIS: Are you currently involved
19 in other cases as well?

20 THE WITNESS: Yes.

21 MR. HARRIS: And which cases are those?

22 THE WITNESS: The Sutter Power Plant
23 Project and the Metcalf Energy Center Project.

24 MR. HARRIS: And did you provide
25 testimony in the Sutter case?

1 THE WITNESS: Yes.

2 MR. HARRIS: Okay.

3 HEARING OFFICER WILLIAMS: Thank you.

4 There was at least a couple of people
5 that came in during Ms. Crowe's testimony and we'd
6 like to have them identify themselves for the
7 record, please.

8 MS. BROWN: My name is Cecilia Brown.
9 I'm with the Endangered Species Division of the U.
10 S. Fish and Wildlife Service.

11 MS. LAGANA: My name is Paulette Lagana.
12 I'm with CAP-IT and we're an intervenor in this
13 process.

14 HEARING OFFICER WILLIAMS: Thank you.
15 Staff, do you have cross examination?

16 STAFF COUNSEL TACHERA: No.

17 HEARING OFFICER WILLIAMS: Does anyone
18 else have any questions of the witness?

19 COMMISSIONER PERNELL: Ms. Crowe, can
20 you tell me whether that's a state endangered
21 species or a federal, the shrimp that you're
22 talking about?

23 THE WITNESS: It's a federal listed
24 species.

25 COMMISSIONER PERNELL: And you've been

1 in touch with the U. S. Fish and Wildlife and the
2 mitigation has been accepted by them?

3 THE WITNESS: Yes, with Cecilia Brown,
4 here.

5 COMMISSIONER PERNELL: Thank you.

6 HEARING OFFICER WILLIAMS: I take it,
7 Mr. Hawkins, that you may have some questions?

8 MR. HAWKINS: Yes.

9 HEARING OFFICER WILLIAMS: The last
10 question was from Commissioner Pernell. I just
11 wanted to indicate that on the record.

12 MR. HAWKINS: Okay, I have here some
13 questions, because I have a map from the EPA and
14 it shows all the endangered species.

15 CROSS EXAMINATION

16 BY MR. HAWKINS:

17 Q And I was wondering if it correlates
18 with what you've studied on?

19 HEARING OFFICER WILLIAMS: Sir, do you
20 have copies of that, by any chance?

21 MR. HAWKINS: No, I don't, I just have
22 this one copy.

23 HEARING OFFICER WILLIAMS: Can we just
24 have a look at it?

25 MR. HAWKINS: Sure.

1 HEARING OFFICER WILLIAMS: We'll mark it
2 next in order as number 32.

3 (Thereupon the above referenced document
4 was marked as Exhibit 32 for
5 identification.)

6 HEARING OFFICER WILLIAMS: And we'll
7 have Mr. Hawkins -- I think you've already
8 identified what it is.

9 BY MR. HAWKINS:

10 Q And you identified all those species in
11 your biological impact studies?

12 A Yes. I got the list of species from the
13 Fish and Wildlife Service and the Fish and Games'
14 natural diversity database and California Native
15 Plant Society's inventory.

16 Q Are you familiar with all the emissions
17 they're going to be presenting into the
18 environment?

19 A What kind of emissions?

20 Q All the emissions, period. Okay, put it
21 this way, when it rains, where does the water go?
22 It's a biological question.

23 A On the ground.

24 Q Okay. And where does it go from there
25 when the ground is saturated?

1 A The drainage plan for the site is going
2 into a discharge -- or a storm water discharge
3 outfall into Dowest Slough, which will then
4 eventually get to New York Slough.

5 Q Okay. And so have you identified the
6 salmon that are the endangered species?

7 A The what?

8 Q The salmon.

9 A Oh, salmon, yes.

10 Q Yeah, I have an accent, sorry. And now
11 as far as the impact on the salmon, what are they
12 doing to mitigate that?

13 A We have no impact on salmon. We're
14 avoiding all of the habitat in the San Joaquin
15 River for salmon and the discharge from the power
16 plant is going through the Delta Diablo Sanitation
17 District, under their MPDS permit, which follows
18 the water quality criteria.

19 Q Okay, now since the rain runs off into
20 the Delta, right? Now, when the rain -- does it
21 clean the air or does it not clean the air when it
22 rains?

23 A It does collect some particulates.

24 Q Yeah, and have you looked at the
25 emissions, the airborne emissions that you're

1 going to be putting out and do you know if those
2 are going to be attached to water molecules when
3 they come down, when it rains?

4 A Yes.

5 Q And you've looked at benzene, for one,
6 the volume they're putting out into the air?

7 MR. HARRIS: I think -- can I ask a
8 question. I think we're getting into public
9 health issues at this point and not biological,
10 and that's the subject of our next hearing.

11 MR. HAWKINS: Well, the reason I'm
12 asking is because the animals drink that water and
13 it's going to be running off and the animals
14 are --

15 HEARING OFFICER WILLIAMS: No, Mr.
16 Hawkins, I think the point is that I think that
17 subject area is coming up on the 18th. And it's
18 probably not the appropriate time for -- if you're
19 talking about soil and its effects, runoff, that
20 sort of thing.

21 MR. HAWKINS: Okay, this is just soil
22 right now, there's no water involved in this
23 biological impact study?

24 HEARING OFFICER WILLIAMS: Okay. Well,
25 if you're talking about impact on animals, is that

1 basically where you're going?

2 MR. HAWKINS: Right, animals, the fish,
3 the whole works.

4 HEARING OFFICER WILLIAMS: Okay, okay. I
5 think that's what he's asking about.

6 MS. STRACHAN: If maybe I could answer,
7 because I think what you're asking is -- this is
8 Susan Strachan.

9 You're asking about --

10 HEARING OFFICER GEFTER: And Ms.
11 Strachan is under oath from previous hearings.

12 MS. STRACHAN: Correct, correct.

13 I'm the Environmental Project Manager,
14 representing Calpine/Bechtel.

15 I think you're speaking of the
16 stormwater runoff and the quality of the
17 stormwater runoff and any potential impact that
18 may have on wildlife, is that correct?

19 MR. HAWKINS: Right.

20 MS. STRACHAN: The stormwater is treated
21 on site to ensure that it doesn't have
22 contaminants in it before it is discharged into
23 Dowest Slough, as Debra mentioned.

24 MR. HAWKINS: Well, since the air goes
25 beyond the site, that's the reason I'm bringing

1 this up. Because the air -- when it rains the air
2 is already past this site, it's raining, it's
3 going into the other storm drains. And I was
4 wondering if you did any biological impact on the
5 drinking water supply, the Delta supply after the
6 benzene hits it and so forth.

7 Benzene, there's other chemicals here
8 that are also water soluble. They attach to water
9 and it takes them a long time to be dissolved in
10 the environment and I was wondering how far your
11 impact studies went on that issue?

12 THE WITNESS: We analyzed the deposition
13 of nitrogen oxides, sulphur oxides, particulates.

14 MR. HAWKINS: You did not do the organic
15 compounds then, and so forth, right?

16 THE WITNESS: Not for air.

17 BY MR. HAWKINS:

18 Q So you don't know about -- nobody took
19 any samples to find these compounds in the water
20 beforehand or before a rain and after a rain to
21 set a baseline?

22 A Are you talking about source water for
23 the power plant and then it goes --

24 Q The water, period, in the whole area,
25 all the rain runoff, because this is going to be

1 affecting -- in the air is going to be affecting
2 all the runoff all the way from here, whichever
3 direction the wind is blowing.

4 MR. HARRIS: We're sharing this
5 microphone.

6 You know, Joe, I think you're getting in
7 the areas again that are not really biological
8 resources. This sounds more like public health
9 issues and they sound more like air quality
10 issues. We have a workshop on air quality coming
11 up and you'll have a chance to review our
12 testimony which will be filed next Monday, the
13 8th, to talk about those issues.

14 And so I guess what I'm concerned about
15 is you're creating an impression here that this
16 witness hasn't reviewed things, when, in fact,
17 those aren't the subject matters that we're
18 hearing tonight. That's my concern.

19 MR. HAWKINS: Well, that's the reason
20 I'm checking into it, to see if she has reviewed
21 those things, because it's supposed to be
22 biological, it will affect --

23 HEARING OFFICER WILLIAMS: Mr. Hawkins,
24 excuse me, did she answer your question
25 satisfactorily?

1 MR. HAWKINS: No, she didn't answer the
2 last question.

3 HEARING OFFICER WILLIAMS: Okay, would
4 you put it to her again?

5 MR. HAWKINS: I don't even remember what
6 it was.

7 MR. HARRIS: Oh, I remember, she
8 answered it.

9 (Laughter.)

10 MR. HAWKINS: Sorry, I've got a faulty
11 memory sometimes.

12 HEARING OFFICER WILLIAMS: I think you
13 were asking about the runoff.

14 MR. HAWKINS: Yeah.

15 HEARING OFFICER WILLIAMS: As it
16 impacted --

17 MR. HAWKINS: I can't even pull it back
18 now. I got sidetracked. But, yeah, I just want
19 to make sure that she covered all the chemicals
20 that were in the water and all the chemicals --
21 because it comes from the air. You know, after
22 the rain, can you smell the difference, the
23 freshness of the air? Can you smell it?

24 THE WITNESS: Sure.

25 MR. HAWKINS: Yeah, so everybody can.

1 So anyway, that means that all those chemicals
2 that were in the air are now in the water supply
3 and the water supply goes straight to those
4 animals. And there is a ton of endangered species
5 there, you know, so we're talking a lot of animals
6 and wildlife that are going to be affected, and I
7 don't see how you could possibly mitigate it all.
8 And that's the reason I was checking in on this.

9 HEARING OFFICER WILLIAMS: Let the
10 record reflect that we received the endangered
11 species listing that Mr. Hawkins used to address
12 the witness and we've marked it and receive it as
13 Exhibit Number 31 -- 32, I'm sorry, 32.

14 (Thereupon the above-referenced
15 document, marked for identification as
16 Exhibit Number 32 was received in
17 evidence.)

18 HEARING OFFICER WILLIAMS: Are there any
19 other questions from any other intervenors?

20 Seeing none --

21 MR. HARRIS: Can I have an opportunity
22 for redirect?

23 HEARING OFFICER WILLIAMS: Sure, go
24 right ahead.

25 ///

1 REDIRECT EXAMINATION

2 BY MR. HARRIS:

3 Q A couple of quick questions, Debra. You
4 got a chance to briefly analyze that endangered
5 species map that was presented --

6 HEARING OFFICER WILLIAMS: Would you
7 like the map to look at while you're questioning?

8 MR. HARRIS: No, I think she had a
9 chance to look at it.

10 THE WITNESS: No, it doesn't show the
11 species in particular, it just shows locations of
12 threatened and endangered species.

13 BY MR. HARRIS:

14 Q Okay, locations only. So you are
15 familiar with that information that was presented
16 by Mr. Hawkins?

17 A Yes.

18 Q And was that part of your analysis?

19 A Yes, -- well, mine was more detailed,
20 yes.

21 Q Okay, so the map that you received was a
22 general map showing habitat areas, is that
23 correct?

24 A Yes.

25 Q Okay. Let me ask you as well, did you

1 perform a cumulative impacts analysis as part of
2 your analysis as well?

3 A Yes.

4 Q And do you show any unmitigated
5 cumulative impacts as a result of the project?

6 A No.

7 Q Okay. And for the record again, can you
8 let us know which agencies you've consulted with
9 as part of your analysis?

10 A The U. S. Fish and Wildlife Service,
11 California Department of Fish and Game, the
12 National Marine Fishery Service, and the U. S.
13 Army Corps of Engineers.

14 Q And each one of those agencies has a
15 responsibility to review the information you put
16 together?

17 A Yes.

18 MR. HARRIS: Thanks. No more redirect.

19 HEARING OFFICER WILLIAMS: First, I'd
20 like to ask staff, do you have any questions at
21 this point for this witness?

22 STAFF COUNSEL TACHERA: No.

23 HEARING OFFICER WILLIAMS: Does the
24 Committee have any questions?

25 MR. HARRIS: Could I ask the

1 representative from the U. S. Fish and Wildlife
2 Service to answer maybe a couple of questions for
3 us, as well, in this connection?

4 HEARING OFFICER WILLIAMS: Yes, that
5 might be a good idea.

6 MR. HARRIS: Cecilia, is that all right
7 with you?

8 Does she need to be sworn?

9 HEARING OFFICER WILLIAMS: Yes.

10 HEARING OFFICER GEFTER: Is the
11 Applicant going to sponsor testimony from the
12 representative from the U. S. Fish --

13 MR. HARRIS: No, I want to ask her a
14 couple of questions, so --

15 HEARING OFFICER GEFTER: Well, if it's
16 going to be sworn testimony, we'll have to have
17 her sworn.

18 MR. HARRIS: Okay, let's have her sworn.
19 Whereupon

20 CECILIA BROWN
21 was called as a witness and having been first duly
22 sworn, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HARRIS:

25 Q I wanted to ask you if in your

1 endangered species analysis --

2 HEARING OFFICER GEFTER: Mr. Harris,
3 first, identify the witness and ask her to
4 indicate her position.

5 BY MR. HARRIS:

6 Q Would you identify yourself and indicate
7 your position?

8 A Yes, my name is Cecilia Brown and I work
9 with the U. S. Fish and Wildlife Service as a fish
10 and wildlife biologist in the endangered species
11 division.

12 Q Okay. You heard the questions presented
13 by Mr. Hawkins, is that correct?

14 A Yes, I did.

15 Q And when you do your endangered species
16 analysis, do you take into consideration the
17 issues that were raised?

18 A Yes, we do. We reviewed all the
19 information submitted by Calpine/Bechtel and their
20 representatives, including the cumulative impacts
21 analysis and determined, based on that
22 information, that -- or we based our analysis and
23 our determination of effects to listed species
24 under our jurisdiction based on that information.

25 Q So is there a threshold analysis you go

1 through to determine whether there's an impact on
2 those species?

3 A What we looked at was whether or not the
4 emissions from -- the emissions to the air from
5 the power plant, whether or not they met
6 applicable federal and state air quality
7 standards, which are determined for both human
8 help and wildlife effects, and determined that if
9 those emissions met applicable air quality
10 standards that we did not need to further analyze
11 or consult on those effects.

12 Q Okay, and what were your findings
13 specifically in this case?

14 A Specifically in this case, based on all
15 of the activities, including construction of the
16 plant, that the project was not likely to
17 adversely affect the salt marsh harvest mouse, the
18 California Clapper Rail, the Delta smelt and its
19 associated critical habitat, the Sacramento split
20 tail, the Lange's Metalmark butterfly, the Antioch
21 Dunes Evening Primrose and its associated habitat,
22 and the Contra Costa Wallflower.

23 We determined that there was likely an
24 adverse effect to the vernal pool fairy shrimp
25 that the Applicant would be mitigating for at a

1 ratio of three acres for every acre lost from the
2 construction of the plant.

3 Q Okay, and you find that mitigation
4 acceptable?

5 A Yes, we do.

6 MR. HARRIS: I have no more questions.

7 HEARING OFFICER WILLIAMS: I take it,
8 Mr. Hawkins, that you have some questions?

9 MR. HAWKINS: Right.

10 HEARING OFFICER WILLIAMS: Would you
11 like to sit up here, perhaps. There's no mike
12 there.

13 CROSS EXAMINATION

14 BY MR. HAWKINS:

15 Q When you did that analysis, -- what was
16 your name again?

17 A Mr. name is Cecilia Brown.

18 Q Cecilia, when you did that analysis, did
19 you look on page nine of the FDOC from the BAAQMD?

20 A I'm sorry, I don't have that information
21 in front of me. I don't know what you're
22 referring to.

23 MR. HAWKINS: Does anyone here have a
24 copy she can look at? No?

25 MR. HARRIS: The air quality hearing is

1 coming up, as I said, Joe.

2 MR. HAWKINS: Right.

3 HEARING OFFICER WILLIAMS: Could you
4 just identify what you're going to be --

5 MR. HAWKINS: Well, it is the emissions
6 that are -- and the reason I'm asking her is
7 because they're showing the risk screening trigger
8 levels and then they're showing the pounds per
9 year and what they should be, the risk screen
10 trigger levels. And a lot of these chemicals are
11 above what they should be. And I was just curious
12 as to if she looked at that, that means when it
13 rains we're going to be looking at that in our
14 groundwater.

15 HEARING OFFICER WILLIAMS: Now, what
16 report are you --

17 MR. HAWKINS: The FDOC, Final
18 Determination Of Compliance by the BAAQMD

19 MR. HARRIS: Okay. I think the problem
20 here is you're asking the Fish and Wildlife
21 Service to comment on an air quality issue. And,
22 again, I don't know that she wants to hazard a
23 guess in an area that she's not familiar with.

24 MR. HAWKINS: No, I asked if she
25 considered this when she --

1 HEARING OFFICER WILLIAMS: Mr. Harris,
2 let us try to keep things in order, if we can.
3 We'll try to work with Mr. Hawkins.

4 Why don't you continue and ask your
5 questions to the witness. Put it in the form of a
6 question.

7 BY MR. HAWKINS:

8 Q How about, let's take for instance,
9 benzene. Okay, the risk screening level is 6.7,
10 the pounds per year is 709 that are going to be
11 emitted into the air. You're talking about, let's
12 see, I don't know how many times that's way over
13 -- I mean that's a lot that they're going --

14 A Well, whether or not that emission will
15 rain down into the Delta and cause such a vast
16 water quality alteration as to jeopardize the
17 continued existence of these species, to the best
18 of my knowledge, based on the information provided
19 in the biological assessment, that those emissions
20 will not cause such a vast water quality change as
21 to jeopardize the continued existence of these
22 species or to adversely affect them to such an
23 extent that a formal consultation was required.

24 Q Are you aware of the cumulative effects
25 of toxic chemicals and the additive effect of

1 different toxic chemicals?

2 A In a general way, yes.

3 Q Okay. And do you know that we're
4 talking a lot of chemicals here that they're going
5 to be emitting --

6 HEARING OFFICER WILLIAMS: Mr. Hawkins,
7 I believe she stated that she is a biologist.

8 MR. HAWKINS: Right.

9 HEARING OFFICER WILLIAMS: So I think
10 she would have --

11 MR. HAWKINS: Okay, so, I'm trying to
12 figure out how to word this.

13 Q So, what I'm trying to get to here is,
14 do you realize that all these chemicals, a lot of
15 them are above risk screening levels?

16 A Yes, I understand that they are above
17 the risk screening levels. But as to whether or
18 not those chemicals emitted to the air, when they
19 rain down during a rain event, will cause such a
20 vast difference or such a noticeable difference in
21 the overall water quality of the Sacramento-San
22 Joaquin Delta as to cause -- as to damage the
23 habitat of these associated fish species, I do not
24 believe, to the best of my knowledge that that
25 will occur. And I made that determination based

1 on the biological assessment provided by the
2 Applicant.

3 Q Okay, and again, I don't think she did
4 it, but did you personally -- did the Fish and
5 Game personally take water samples or soil samples
6 before a rain and after a rain?

7 A I don't know if Fish and Game did that.
8 I do not work for them, I work for the federal
9 agency, U. S. Fish and Wildlife Service.

10 Q Oh, well, that's --

11 A The Fish and Wildlife Service, no, they
12 did not collect water quality samples to establish
13 a baseline.

14 MR. HAWKINS: Okay. All right. I don't
15 need to know that.

16 HEARING OFFICER WILLIAMS: Okay, thank
17 you.

18 Any redirect?

19 MR. HARRIS: I was going to ask her if
20 she's happy she came tonight, but I think I'll
21 pass on that.

22 (Laughter.)

23 THE WITNESS: Overjoyed, thank you.

24 (Laughter.)

25 MR. HARRIS: No, I have no further

1 questions, thank you.

2 HEARING OFFICER WILLIAMS: Ms. Brown,
3 there are certain reports that your agency has to
4 submit or generally submits in these matters to
5 the --

6 THE WITNESS: That's correct. The U. S.
7 Army Corps of Engineers requested consultation
8 with us on potential effects of this project to
9 the vernal pool fairy shrimp. We consulted not
10 only on the vernal pool fairy shrimp, but on the
11 other species that I read off earlier and made an
12 effects determination.

13 We submitted that effects determination
14 in a biological opinion addressed to the Army
15 Corps of Engineers.

16 HEARING OFFICER WILLIAMS: Did you bring
17 a copy of that?

18 THE WITNESS: Yes, I did. This is a
19 draft copy. The final opinion is in signature
20 presently and I do not anticipate that there will
21 be any substantial changes in this document from
22 its draft form to its final form.

23 HEARING OFFICER WILLIAMS: Are you
24 prepared to give us a copy of that?

25 THE WITNESS: Yes.

1 HEARING OFFICER WILLIAMS: Have you seen
2 a copy of that?

3 MR. HARRIS: Well, I was going to
4 suggest that perhaps it would be best to wait for
5 the final which should be out in a few days, just
6 so there's no confusion in the record. That may
7 be best, even though Cecilia is not anticipating
8 any significant changes, but upon receipt,
9 obviously we file and serve that and docket it to
10 everyone.

11 HEARING OFFICER WILLIAMS: Okay, okay,
12 that's fine.

13 MR. HARRIS: Maybe we should move it
14 into evidence at the next hearing.

15 HEARING OFFICER WILLIAMS: Okay, fine.
16 We'll proceed to staff's testimony.

17 HEARING OFFICER GEFTER: Okay, and Ms.
18 Brown may be excused as a witness.

19 THE WITNESS: Thank you.

20 HEARING OFFICER WILLIAMS: Thank you.

21 MR. HARRIS: Before we move, do you want
22 me to put the documents in now or do you want me
23 to wait until the end of staff's testimony?

24 HEARING OFFICER WILLIAMS: Let's wait.

25 MR. HARRIS: Okay, glad to.

1 Whereupon

2 MARC SAZAKI

3 was called as a witness and having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. TACHERA:

7 Q Can you indicate your name and position?

8 A My name is Marc Sazaki. I'm a biologist
9 with the California Energy Commission and I've
10 been assigned to the Delta Energy Center Project.

11 Q And do you have any changes and
12 modifications that you'd like to make at this time
13 to your testimony?

14 A Yes, I have a couple of changes I'd like
15 to make.

16 On page 267 of my testimony, the second
17 paragraph, third line down, after the word,
18 "against," change the word "unpermitted" to
19 "unauthorized".

20 And on page 273, the first paragraph,
21 third line down, after the paren, close paren,
22 insert "in it that are possibly".

23 HEARING OFFICER WILLIAMS: Could you
24 repeat that, please?

25 THE WITNESS: Do you want me to read the

1 sentence? Okay, the sentence would say, "The site
2 and laydown areas are moderately disturbed annual
3 grasslands that include a small seasonal wetland.
4 It was found to have cysts (an intermediate dry
5 period life stage) in it that are possibly of the
6 federally listed vernal pool fairy shrimp."

7 HEARING OFFICER WILLIAMS: One more
8 time, could you go through it?

9 CHAIRMAN KEESE: The two words you're
10 adding?

11 THE WITNESS: I'm adding after the close
12 paren on the third line, add "in it that are
13 possibly" and at the end of that sentence delete
14 "in it".

15 That corresponds to a previous reference
16 to the fact that the cysts weren't positively
17 identified as vernal pool fairy shrimp. And when
18 we were editing we missed that particular
19 reference. That's all I have.

20 BY MS. TACHERA:

21 Q Mr. Sazaki, could you summarize your
22 testimony for us?

23 A I reviewed the proposal for the Delta
24 Energy Center Project, the submittals by the
25 Applicant in the biology sections of the AFC, the

1 biological assessment provided to the Fish and
2 Wildlife Service. I visited the site and I've
3 toured the linear facilities corridors and
4 assessed the potential for impacts on threatened
5 and endangered species and other wildlife that
6 might result as of the building and operating of
7 this power plant.

8 And I concluded that with the proposed
9 mitigation and our requirements for the
10 development of a biological mitigation
11 implementation and monitoring plan, that the
12 potential for significant impacts on the
13 environment, which affected biological resources,
14 will be insignificant.

15 I've just reviewed the proposed federal
16 biological opinion and I don't have any problems
17 with that mitigation that's being proposed there.
18 And I believe it corresponds to what we're
19 proposing, as a condition of certification.

20 And that summarizes my testimony.

21 HEARING OFFICER WILLIAMS: Mr. Sazaki,
22 just for the record, could you state your position
23 on the staff. I don't know if you did that and I
24 didn't hear or --

25 THE WITNESS: I'm a staff biologist.

1 I'm a Planner II, Energy Facility Siting.

2 HEARING OFFICER WILLIAMS: Thank you.

3 Counsel, did you have any more
4 questions?

5 STAFF COUNSEL TACHERA: No.

6 HEARING OFFICER WILLIAMS: Is there any
7 cross?

8 MR. HARRIS: A couple of things.

9 CROSS EXAMINATION

10 BY MR. HARRIS:

11 Q Marc, do you have your testimony in
12 front of you?

13 A Yes.

14 Q Can we go to page 273. I'm looking at
15 the second full paragraph. There's a discussion
16 about a segment that passes along coastal marsh
17 habitat. I think that was correct at the time
18 this was written, but my understanding is that
19 that segment is now been horizontal -- is now
20 subject to horizontal directional drilling. Is
21 that your understanding?

22 A Yes, that's true, that's an oversight.
23 It doesn't really pass through, it passes under.

24 Q I was going to suggest and see if you're
25 amenable to striking out that sentence starting

1 with the word "Accept" all the way to the end and
2 then also striking out, I think, the entirety of
3 the next sentence as well, just to reflect the HDD
4 construction methodology. Is that acceptable to
5 you?

6 A Well, isn't it true that it will be
7 trenched near the marina and fishing pier --
8 between the marina and the fishing pier?

9 MS. STRACHAN: There's a small portion
10 at the marina that will be trenched and that's on
11 the west side of L Street, and that's the only
12 portion that will be trenched between the two
13 directional drilling locations. But that area
14 from the Antioch Marina east to, actually beyond
15 the Antioch Pier will be directionally drilled.

16 THE WITNESS: Now, how long will that
17 trenched portion be?

18 MS. STRACHAN: It's about five to 700
19 feet.

20 HEARING OFFICER WILLIAMS: Well, let the
21 record reflect that the Applicant is pointing to
22 the map that demonstrates where the --

23 MR. HARRIS: I can give you the citation.
24 It's figure 2.1-1(a), which has been previously
25 admitted into evidence.

1 HEARING OFFICER WILLIAMS: Right.

2 HEARING OFFICER GEFTER: As Exhibit 22.

3 MS. CROWE: There will be a trench
4 between the two directional drill segments, but
5 that doesn't go through coastal brackish marshes
6 along the railroad track.

7 THE WITNESS: Okay. Is it anywhere near
8 the Antioch Marina or the public fishing pier?

9 MS. CROWE: Yes.

10 THE WITNESS: Okay, we're getting close.
11 I agree that it's going to go under a coastal
12 brackish marsh, but I didn't fully appreciate this
13 change and where the trenching would take place.
14 But my conclusions were that that area is outside
15 of the sensitive habitat.

16 MS. CROWE: Yes.

17 THE WITNESS: And I even have here that
18 it was my understanding at the time that it was
19 about a quarter of a mile long and now you're
20 saying it's 500 feet.

21 MS. STRACHAN: This is Susan Strachan.
22 Let me move over and show you on the map and I
23 think that will be helpful.

24 HEARING OFFICER GEFTER: Referring again
25 to Exhibit 22.

1 MS. STRACHAN: Correct, this is
2 Exhibit -- or Figure 2.1-1(a), which is Exhibit
3 22.

4 Let me get myself oriented. Right where
5 these two black squares are, it's in between that
6 point, that 500 to 700 feet that will be trenched.
7 That's right in front of the Antioch Marina. If
8 you remember back to --

9 THE WITNESS: We went out and looked at
10 that.

11 MS. STRACHAN: At the site visit.
12 That's that area that we walked. From the point
13 at the Antioch Marina just west, just on the other
14 side of L Street, which is the main street leading
15 into the Marina, at that point is the start of the
16 second directional drill. And it goes from there
17 all the way to Fulton Shipyard Road, which is
18 right here where this other square is and that's
19 approximately 5,000 feet.

20 And so all of the coastal brackish marsh
21 that's found through here will be avoided through
22 horizontal directional drilling.

23 THE WITNESS: Okay, I understand that,
24 that's fine. But would you want to -- but you
25 were asking to delete some of this --

1 MR. HARRIS: Well, we're open to
2 suggestions, Marc, I just thought it'd be
3 easier --

4 THE WITNESS: I wanted to, you know,
5 have the correct description here and
6 understanding of what the project was. And when
7 we were out in the field I thought this reflected
8 that at that time, but --

9 HEARING OFFICER WILLIAMS: Well, perhaps
10 we can have a recess and you all can talk about
11 it, but I don't think we need to do anything with
12 it right now. We'd like to move on and have Mr.
13 Hawkins -- do you have any cross examination?

14 MR. HAWKINS: Is there a chance I can do
15 that after they've discussed this and figured out
16 their situation here?

17 MR. HARRIS: Actually, I do have one
18 more question.

19 HEARING OFFICER WILLIAMS: Okay, go
20 ahead, I'm sorry.

21 BY MR. HARRIS:

22 Q Marc, even in light of this, I wanted to
23 go to page 268 of your testimony. The first full
24 paragraph on that page is basically a summary, and
25 it states,

1 "If the proposed conditions of
2 certification for biological resources
3 are required and subsequently
4 implemented, staff concludes that there
5 should be no significant biological
6 impacts associated with the construction
7 and operation of the proposed Delta
8 Energy Center."

9 And my question to you, is that still
10 your conclusion for the project?

11 A Yes, it is.

12 MR. HARRIS: Okay, thank you.

13 HEARING OFFICER WILLIAMS: Does that
14 conclude?

15 MR. HARRIS: Yes, thank you.

16 HEARING OFFICER WILLIAMS: Staff, do you
17 have any redirect?

18 STAFF COUNSEL TACHERA: No.

19 HEARING OFFICER WILLIAMS: Now, Mr.
20 Hawkins.

21 MR. HAWKINS: Do you want me to go ahead
22 before they've ironed everything out?

23 HEARING OFFICER WILLIAMS: Yeah, after
24 they've ironed everything out you'll have another
25 chance to --

1 MR. HAWKINS: Okay.

2 CROSS EXAMINATION

3 BY MR. HAWKINS:

4 Q All right, pretty much the same
5 questions. You took into account the emissions
6 and when it rains?

7 A I looked at the noncriteria pollutant
8 analysis that was presented by the Applicant. And
9 their findings based on that in the potential area
10 of impact were that the maximum annual impact
11 values that would cause likely detrimental effects
12 would not occur. I didn't do any independent
13 analysis that I think you're suggesting.

14 Q Like a soil sample --

15 A We don't sample soils. We don't go out
16 and do our own research and collections of
17 biological parameters.

18 Q And who does that?

19 A We rely on the Applicant to submit
20 information.

21 Q And did they give you that information?

22 A No, they did not give that information
23 specifically, that I'm aware of. I didn't review
24 the FDOC, that you referred to you earlier and I
25 relied on the draft impact analysis that was

1 presented in their submittal.

2 MR. HAWKINS: Okay, that's all I needed.

3 MR. HARRIS: A quick redirect.

4 RE CROSS EXAMINATION

5 BY MR. HARRIS:

6 Q You do receive information from the
7 Applicant, is that correct?

8 A Yes.

9 Q And from -- do you also receive input
10 from other biological agencies, as well?

11 A We coordinate with Fish and Game and to
12 the extent possible with the Fish and Wildlife
13 Service and the National Fishery Service.

14 Q With the information you received, do
15 you perform an independent analysis on that
16 information or do you just accept it as submitted?

17 A We examine the information as provided
18 and make our own judgment on its validity or
19 acceptability.

20 Q So you do do an independent analysis on
21 the information submitted by the Applicant?

22 A Yes.

23 Q Thank you.

24 HEARING OFFICER WILLIAMS: It's time for
25 questions from any other intervenors? Does

1 anyone -- seeing none, does the Committee have any
2 questions?

3 I have a couple of questions.

4 MR. HAWKINS: I have one more for him.

5 It's Joe Hawkins again.

6 RE CROSS EXAMINATION

7 BY MR. HAWKINS:

8 Q They provided you the information,
9 everybody gave you the information. Did any of
10 that information at all show any of this, as far
11 as what I've already asked you?

12 A I'm trying to remember what you asked
13 me.

14 Q About the chemicals down in the rain --

15 A In the rain --

16 Q -- and into the runoff and into the soil
17 and --

18 A No, there wasn't any information to that
19 effect.

20 Q And no sampling was given to you before
21 and after a rain?

22 A No. And I don't remember them
23 submitting samples like that that might have
24 included, you know, emissions from household
25 residential heaters or deposition that may come

1 off of highways or roads, none of that was
2 submitted.

3 Q So you don't -- would you consider then
4 that not having that information, would that cause
5 an impact on your studies?

6 A No, because we looked at the impacts of
7 the project and what they presented and I think
8 they mentioned earlier that in dealing with
9 precipitation and site runoff it's treated before
10 it leaves the project.

11 Q And what about the air that gets past
12 the site runoff and then rains down and goes into
13 the water supply?

14 A That wasn't a part of the analysis,
15 other than what I already discussed about the
16 maximum, you know --

17 Q Okay, that's what I wanted to know.

18 A -- pollutants in the drift.

19 MR. HAWKINS: All right.

20 MR. HARRIS: Sorry, Major.

21 HEARING OFFICER WILLIAMS: Go right
22 ahead.

23 MR. HARRIS: I have a couple of quick
24 questions.

25 ///

1 RE CROSS EXAMINATION

2 BY MR. HARRIS:

3 Q Marc, this whole discussion about rain
4 runoff and samplings, are you aware of any
5 regulatory requirements that the Commission take
6 those samples or collect the kind of data that's
7 been suggested?

8 A No.

9 Q So your information that you use your
10 analysis is complete according to the regulations
11 that govern your analysis, is that correct?

12 A Yes, for biological resources it is.

13 Q And you also performed a cumulative
14 impacts analysis as part of that?

15 A Yes.

16 Q And did you find any significant
17 unmitigated cumulative impacts?

18 A Not related to the project, no.

19 MR. HARRIS: That's it, thank you.

20 HEARING OFFICER WILLIAMS: Thank you,
21 Mr. Harris.

22 I just have a couple of questions. Mr.
23 Sazaki, it's my understanding that you received a
24 draft erosion control plan?

25 THE WITNESS: That was submitted to our

1 Soils and Water Unit and I reviewed it.

2 HEARING OFFICER WILLIAMS: Was that
3 approved yet, or what happened?

4 THE WITNESS: I think the draft plan,
5 I'm not sure that has been approved yet. It might
6 be something that occurs during our process or
7 shortly after it. You might direct that question
8 to our soils and water person.

9 HEARING OFFICER WILLIAMS: What is your
10 relationship to the reports that are to be
11 received from the federal agency and the state
12 agency with regard to Ms. Brown's testimony? Will
13 you be reviewing those reports?

14 THE WITNESS: Yes, I will. I saw the
15 draft this evening and I reviewed it quickly and I
16 was concentrating on the proposed mitigation to
17 see if it was consistent with what we were
18 proposing.

19 And we've had meetings with the agencies
20 to discuss some of these aspects of compensation
21 and mitigation.

22 HEARING OFFICER WILLIAMS: Just for my
23 own understanding, what is that process that
24 exists or that relationship that exists between
25 the Corps of Engineers, U. S. Corps of Engineers

1 and the United States Fish and Wildlife Division,
2 how does that whole process operate? Can you
3 explain that to me?

4 THE WITNESS: If this is sort of a test,
5 I can give you my understanding of the process,
6 but I would rely on Ms. Brown's knowledge of that.
7 But if you want me to go ahead, I'll be happy to
8 give you my understanding of that.

9 HEARING OFFICER WILLIAMS: Counsel?

10 STAFF COUNSEL TACHERA: Mr. Williams,
11 perhaps that question, since it involves two
12 federal agencies, could be directed to Ms. Brown.

13 HEARING OFFICER WILLIAMS: No, I just
14 want to know what the Energy Commission's role in
15 terms of whatever coordination that takes place,
16 in terms of receiving those reports and how that
17 works.

18 THE WITNESS: We, first of all, when an
19 application is received, find out who in the
20 federal agencies, as well as the other state
21 resource agencies should be receiving the
22 application. And that process allows them to
23 understand that there is an application that has
24 been submitted. And as part of the process for
25 determining what mitigation is necessary, we built

1 into our conditions of certification a requirement
2 for providing a biological mitigation -- resource
3 mitigation, implementation and monitoring plan
4 which requires that they submit the terms and
5 conditions of the federal permits that have been
6 issued, so that we can track the compliance of
7 those requirements.

8 And the Applicant has submitted their
9 draft plan and we are currently reviewing it. But
10 that plan is not required until a certain time
11 after certification.

12 HEARING OFFICER WILLIAMS: Okay.

13 Do you know the status of the streambed
14 alteration agreement?

15 THE WITNESS: A draft has been submitted
16 to Fish and Game. That's the status that I'm
17 aware of.

18 HEARING OFFICER WILLIAMS: Will we need
19 to have that before certification?

20 THE WITNESS: We asked of them to
21 provide a draft, a near final draft, but they are
22 not able to actually issue a permit until a CEQA
23 process is completed. So they can provide the
24 near final document and then we would review that
25 and, you know, see if there was any conflicts with

1 what we were proposing, or other agencies, which I
2 doubt would occur.

3 But just for consistency's sake, we
4 would look at it and then respond to them and --

5 HEARING OFFICER WILLIAMS: What about
6 the four -- is the same true for the 404 report?

7 THE WITNESS: The second 404 permit?
8 Again, that's a federal permit process and we
9 would try to assure that that final conclusion of
10 that process comports with what the Commission --
11 we're recommending that the Commission adopt in
12 terms of conditions of certification.

13 HEARING OFFICER WILLIAMS: Okay.

14 In looking at Item 5, and the
15 verification, where it says, "The project owner
16 shall provide the CPM with the final version of
17 the biological resources mitigation implementation
18 and monitoring plan for this project. And the CPM
19 will determine the plan's acceptability within 15
20 days of receipt of the final plan."

21 So my question is does this biological
22 resources mitigation implementation and monitoring
23 plan incorporate all the other permitting
24 agencies' requirements? I don't know if the
25 question is clear?

1 THE WITNESS: I think if you'll look
2 at -- I think my reference, it does that. In bio
3 five, in the protocol, it says, "Identify all
4 conditions agreed to in any streambed alteration
5 agreement and identify all terms and conditions
6 contained in the U. S. Fish and Wildlife
7 biological opinion."

8 So, those are incorporated into the plan
9 and then we used this plan for compliance
10 monitoring.

11 HEARING OFFICER WILLIAMS: Does the
12 Committee have any questions?

13 CHAIRMAN KEESE: No questions.

14 HEARING OFFICER WILLIAMS: Any questions
15 from the intervenors at this point?

16 Seeing none, the witness is excused.

17 We're going to go off the record.

18 (Thereupon a recess was taken.)

19 HEARING OFFICER GEFTER: We're going to
20 finish with biology, biological resources. There
21 was some sort of stipulation on language with
22 respect to staff's biology testimony and we will
23 take that right now.

24 Mr. Sasaki, and you're still under oath.

25 THE WITNESS: All right. Probably the

1 easiest way to do this would be identify the
2 wording that should be struck and then I'll tell
3 you what should be inserted in its place.

4 HEARING OFFICER GEFTER: Could you
5 identify the page --

6 THE WITNESS: Yes, I will. Page 273,
7 second paragraph, third line, strike "through
8 coastal", and on the fourth line strike the entire
9 line.

10 COMMISSIONER PERNELL: Starting with
11 "Pier"?

12 CHAIRMAN KEESE: Starting with
13 "Brackish".

14 THE WITNESS: That's the fifth line.
15 The fourth line starts with "Brackish", strike
16 that entire line. The fifth line strike "pier"
17 and the parenthetical.

18 Okay, and now for the insertion. The
19 third line, after the word "passes", insert "south
20 of the Antioch Marina in the BN and SF," which is
21 Burlington Northern and Santa Fe, "right of way".

22 So now, I'll read that third line, I'll
23 read the entire third line. "Horizontal
24 directional drilling, except for one segment that
25 passes south of the Antioch Marina in the BN and

1 SF right of way."

2 Okay, on the fifth line, strike "a
3 quarter of a mile". It's the last five words in
4 that line. In its place insert "700 feet". Now
5 that sentence will read, "Here it will be buried
6 in a trench about 700 feet long."

7 HEARING OFFICER GEFTER: Okay, do you
8 have any further changes to your testimony?

9 THE WITNESS: No, I do not.

10 HEARING OFFICER GEFTER: Okay, thank
11 you.

12 We also need to ask the Applicant
13 whether the exhibits that were identified in
14 support of our biological resources testimony and
15 would you want to move them into evidence at this
16 time?

17 MR. HARRIS: Yes, we do want to move
18 those documents into evidence.

19 And again, just for reference for the
20 court reporter, we're using the prior filing
21 sections of the testimony. Number one is Section
22 8.2 of the AFC, I'd like to move that portion of
23 the document into evidence.

24 Do you want to do these all at once,
25 Susan, all together? Okay.

1 AFC appendix 8.2, I'd like to move that
2 section of Exhibit 2.

3 The third item is the data -- or the
4 responses to CEC data requests one through nine
5 and that one is already in evidence as Exhibit
6 Number 6, that was admitted on the fifth of
7 October.

8 The fourth item is the Department of
9 Army permit for the Delta Energy Center, that's
10 Exhibit 14 on the list.

11 The fifth item is the California
12 Department of Fish and Game streambed alteration
13 agreement application. That is Exhibit Number 17
14 on the exhibit list.

15 The sixth item is the 1998-1999 vernal
16 pool survey, Exhibit Number 13 on the list.

17 The seventh item is a biological
18 assessment, again, that is part of Exhibit Number
19 14.

20 And item number eight is the wetlands
21 delineation report. That is part of item --
22 excuse me, that is Exhibit Number 8, although we
23 do need to change on the exhibit list, take the
24 word draft off that, because it is the final
25 document. And those are the documents I would

1 like to move into evidence at this time.

2 HEARING OFFICER GEFTER: Is there any
3 objection from staff to these documents being
4 admitted into evidence?

5 STAFF COUNSEL TACHERA: No.

6 HEARING OFFICER GEFTER: Okay. From any
7 intervenor?

8 Hearing no objection, the following
9 documents are received into evidence at this time,
10 and that would include Section 8.2 of the AFC,
11 which is part of Exhibit 2; appendix 8.2 of the
12 AFC, which is again part of Exhibit 2; Exhibit
13 14 -- well, they're out of order, let's start
14 over.

15 Exhibit 13, Exhibit 14, Exhibit 17 and
16 again Exhibit 8. Is that clear for the record,
17 everybody?

18 (Thereupon the above-referenced
19 documents marked as Exhibits 2, 13, 14,
20 17 and 8 were received in evidence.)

21 HEARING OFFICER GEFTER: At this point
22 the record on biological resources is closed, and
23 we will move on to testimony on soil and water
24 resources.

25 Is the Applicant prepared to go forward

1 on this topic?

2 MR. HARRIS: Yes, we are. Would you
3 like to start with water, Susan?

4 HEARING OFFICER GEFTER: Soil.

5 MR. HARRIS: Soil first, okay.

6 Our witness for soil will be Susan
7 Strachan.

8 Whereupon

9 SUSAN STRACHAN

10 was called as a witness and having been previously
11 duly sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HARRIS:

14 Q Can you again state your name for the
15 record?

16 A Susan Strachan.

17 Q And which subject matter are you here to
18 sponsor as your testimony?

19 A Soils.

20 Q And what documents are you sponsoring as
21 part of that testimony?

22 A Section 8.9 of the AFC, Data Adequacy
23 Responses for the Delta Energy Center and
24 responses to CEC Data Request Number 76 through
25 86.

1 Q For the record, those would be Section
2 8.9 of Exhibit 2, a portion of Exhibit 2. Data
3 Adequacy Responses are parts of Exhibit Number 3
4 and the responses to CEC Data Requests are part of
5 the new Exhibit 34, I believe.

6 Now, were these documents prepared
7 either by you or at your direction?

8 A Yes, they were.

9 Q And based upon your testimony, are the
10 facts true to the best of your knowledge?

11 A Yes, they are.

12 Q Do you have any changes or corrections
13 to the testimony?

14 A Yes, I have two changes. On the Section
15 D, labeled prior filings, the second bullet, Data
16 Adequacy Responses for the Delta Energy Center,
17 it's dated July 25th, 1999. It should be January
18 25th, 1999.

19 The second change is under proposed
20 licensing conditions. When we submitted this
21 testimony we had not yet received the final staff
22 assessment section from the CEC staff, so it
23 refers to the PSA and I'd like to change it to
24 read as follows,

25 "The final staff assessment, part

1 two, water resources, FSA for the
2 project filed by the CEC recommends that
3 one condition of certification be
4 adopted to address soil resource issues.
5 This condition is described on pages 18
6 and 19 of the FSA. I have reviewed the
7 applicable condition of certification
8 set forth in the final staff assessment
9 part two, water resources and find it to
10 be acceptable."

11 HEARING OFFICER GEFTER: With respect to
12 the changes to your testimony, you're referring to
13 Exhibit 1, is that correct?

14 MR. HARRIS: Correct.

15 HEARING OFFICER GEFTER: And also with
16 respect to Exhibit 34 that you referenced
17 regarding data responses, this would be a new
18 exhibit and we have previously decided off the
19 record to identify this exhibit as Exhibit 34.
20 And what it is are the Applicant's data request
21 and responses to the Energy Commission's questions
22 on water resources and soil, and it's data request
23 76 through 86, and it was filed April 26th, 1999.

24 MR. HARRIS: Okay.

25 HEARING OFFICER GEFTER: We'll also

1 identify other Exhibits, 33 and Exhibit 35 when we
2 take testimony on water, so that's why 34 seems to
3 be out of order, but it will soon make sense.

4 MR. HARRIS: Thank you.

5 Q With those changes now, Susan, do you
6 adopt this as your testimony?

7 A Yes, I do.

8 Q Since this is an uncontroverted issue, I
9 think I'm going to go right to the end here and
10 ask you whether you have reviewed the final staff
11 assessment?

12 A Yes, I have.

13 Q And you reviewed the conditions of
14 certification for that?

15 A For applicability to soil resources,
16 yes, I have.

17 Q Okay. And are those conditions
18 satisfactory to you?

19 A Yes, it is.

20 MR. HARRIS: At this point I'd make the
21 witness available for cross examination.

22 HEARING OFFICER GEFTER: Does staff have
23 any cross examination of the witness?

24 MR. HARRIS: Did you want to do water
25 first, Susan, and do them together and then make

1 them both available for cross?

2 HEARING OFFICER GEFTER: That probably
3 is better, that way we'll do it as a panel. So,
4 okay, we'll withdraw the opportunity to cross at
5 this point for the staff and we'll go forward with
6 Applicant's witness on water.

7 MR. HARRIS: Okay, great.

8 All right, we'll go to water then.

9 Whereupon

10 NOEL WILLIAMS
11 was called as a witness and having been first duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HARRIS:

15 Q Could you state your name for the
16 record, please?

17 A Noel Williams.

18 Q And, Noel, what subject matter are you
19 testifying about here today?

20 A Water resources.

21 Q And specifically which documents are you
22 sponsoring as part of your testimony?

23 A Section 814 of the AFC, Data Adequacy
24 Responses for the DEC, dated January 25th, 1999,
25 the DEC, MPDES, permit application report

1 submitted to the Energy Commission on April 19th,
2 1999 --

3 HEARING OFFICER GEFTER: Would you
4 identify which exhibit that is?

5 MR. HARRIS: When he gets to the list
6 I'll go back through and identify the exhibit
7 numbers, Susan.

8 HEARING OFFICER GEFTER: Thank you.

9 THE WITNESS: Responses to CEC Data
10 Request 76 through 86, a letter from Doug Buchanan
11 to the City of Antioch on potential impacts on the
12 City of Antioch water supplies from the DEC; an
13 application for industrial discharge permit
14 submitted to the Delta Diablo Sanitation District;
15 and DEC status report number 4.

16 MR. HARRIS: For the record, the Exhibit
17 Numbers on those items, Section 8.14, is part of
18 Exhibit Number 2. The second item, Data Adequacy
19 Responses is part of Exhibit Number 3. The third
20 item, the MPDES permit application is part of the
21 new item number 33. The CEC data responses 76
22 through 86 is part of new item 34. The letter
23 from Doug Buchanan to the City of Antioch is new
24 item 35. The sixth there, the application for
25 industrial discharge permit is part of item number

1 34, the newly identified number 34. And the DEC
2 status report, number 4, is item number -- excuse
3 me Exhibit Number 16, which has been previously
4 admitted.

5 BY MR. HARRIS:

6 Q All right, with that housekeeping out of
7 the way, were these documents prepared by you or
8 at your direction?

9 A Yes, they were.

10 Q And based upon your review of the facts,
11 are these true to the best of your knowledge?

12 A Yes.

13 Q Do you have any changes or corrections
14 to your testimony?

15 A I have changes to Section 2, Proposed
16 Licensing Conditions. And these changes reflect
17 the availability of the final staff assessment at
18 this time, rather than the preliminary staff
19 assessment that was available when we prepared the
20 testimony.

21 I can go through that Section Number 2
22 and indicate what the changes are. I'm just going
23 to start with the first sentence.

24 Cross out PSA and insert "final staff
25 assessment, part two, Water Resources, FSA."

1 HEARING OFFICER GEFTER: Are you
2 referring to Exhibit 1?

3 THE WITNESS: Yes.

4 MR. HARRIS: Part of Exhibit one.

5 HEARING OFFICER GEFTER: Thank you.

6 THE WITNESS: For the project filed by
7 the CEC recommends that, cross out six, insert
8 five, "conditions of certification be adopted to
9 address water resource issues." "These conditions
10 are described on pages --" cross out "334 to 335"
11 and insert "18 and 19 of the --" cross out "P" and
12 insert "FSA".

13 Then cross out the following two
14 sentences. So we're going to cross out,

15 "With the exception of condition of
16 soil and water for these conditions
17 address applicable federal, state and
18 local laws, ordinances, regulations and
19 standards and minimize the project's
20 water resource impacts. Soil and water
21 does not pertain to the DEC project, and
22 it's Calpine/Bechtel's understanding
23 that it will not be included in the
24 CEC's final staff assessment."

25 So those two sentences are crossed out.

1 Now, we're on to the last sentence of
2 the licensing conditions. "I have reviewed
3 applicable conditions of certification set forth
4 in the --" cross out "preliminary" and insert
5 "final staff assessment". Insert "part two, Water
6 Resources and find them to be acceptable."

7 BY MR. HARRIS:

8 Q Thank you, with those changes do you
9 adopt this as your testimony for this proceeding?

10 A Yes, I do.

11 Q Okay. Noel, can you provide us with a
12 brief summary of your testimony?

13 A I did several different analyses for
14 this project. Two of the most important were to
15 look at sources of water for the project and also
16 what impacts the project would have on water
17 quality and subsequent compliance with applicable
18 water quality criteria.

19 The Delta Energy Center will obtain
20 approximately 90 to 95 percent of its water supply
21 from Delta Diablo Sanitation District. That water
22 will be used for cooling water makeup.

23 Prior to use, that secondary treated
24 water from Delta Diablo Sanitation District will
25 obtain tertiary treatment, which involves

1 filtration and additional disinfection before it
2 enters the cooling tower.

3 Approximately five to ten percent of the
4 DEC water supply will be returned condensate from
5 DOW which is right next door and also additional
6 water from Contra Costa Water District, and that
7 water will be raw from the Contra Costa Canal.

8 Prior to use, that water will receive
9 treatment including demineralization and reverse
10 osmosis.

11 With regard to the effect that the water
12 from Contra Costa Water District might have on
13 water supply available for this region, we looked
14 at the regional water supply master plans that
15 have been prepared in the past and what Contra
16 Costa Water District's plans were for supplying
17 water for both municipal and industrial use.

18 Contra Costa Water District has reserved
19 a substantial amount of water that was formerly
20 provided to Gaylord Industries for industrial use.
21 That quantity is approximately 10,000 acre feet
22 per year. The maximum quantity that Delta Energy
23 Center would use would be 5,000 acre feet per
24 year. The likely quantity that DEC would use
25 would be much less than that.

1 So we've concluded that the DEC would
2 not have any significant effect on local water
3 supply.

4 The third water source for the Delta
5 Energy Center is potable water supply from the
6 City of Pittsburg. That's a minor water source
7 and won't have any substantial effect on water
8 supply for the City of Pittsburg.

9 After passing through the various
10 processes within the Delta Energy Center, the
11 cooling water makeup and the other processed water
12 will be discharged back to Delta Diablo Sanitation
13 District and discharged into New York Slough
14 through their facilities and outfall.

15 We've done a substantial amount of
16 review of water quality information that's been
17 collected by other agencies over the past ten to
18 fifteen years and also have done a substantial
19 amount of new water quality modeling to determine
20 what effect that discharge will have on water
21 quality and water quality criteria in New York
22 Slough.

23 We've come to the conclusion that
24 dilution of the discharge out through the Delta
25 Diablo Sanitation District outfall will have

1 dilution that is much higher than the minimum
2 required by the Regional Water Quality Control
3 Board, that all water quality criteria will be met
4 at the completion of that dilution and that the
5 discharges will have no harmful effect on either
6 the City of Antioch's water intake or Contra Costa
7 Water District's water intake at Mallard Slough.

8 Q Okay. Thank you for that summary. Let
9 me ask you a couple of closing questions now.
10 Have you reviewed the final staff assessment?

11 A Yes, I have.

12 Q And you've reviewed the conditions of
13 certification of FSA?

14 A Yes, I have.

15 Q And are those conditions of
16 certification acceptable to you?

17 A Yes, they are.

18 MR. HARRIS: That's all I have. I'd
19 make both witnesses available now for cross
20 examination.

21 HEARING OFFICER GEFTER: Does staff have
22 cross examination of the witness -- of either
23 witness?

24 STAFF COUNSEL TACHERA: No.

25 HEARING OFFICER GEFTER: Okay. Do any

1 of the intervenors have cross examination for the
2 witnesses?

3 Okay, first Paulette Lagana from CAP-IT
4 and then Mr. Hawkins.

5 MS. LAGANA: For the record, this is
6 Paulette Lagana from CAP-IT, and I'm on my toes,
7 what can I say.

8 (Laughter.)

9 CROSS EXAMINATION

10 BY MS. LAGANA:

11 MS. LAGANA: Noel, I do have a question
12 about the Contra Costa Water District water supply
13 excess from Gaylord is 10,000 acre feet per year?

14 MR. WILLIAMS: Yes, I think that's
15 approximately correct. I think it's 10,800, if I
16 recall correctly.

17 MS. LAGANA: And of that the DEC is
18 going to use 5,000 acre feet?

19 MR. WILLIAMS: At the absolute outside.
20 That would be if they had to use Contra Costa
21 Water District as cooling water makeup for an
22 entire year. That is not going to happen unless
23 something very drastic happens to Delta Diablo
24 Sanitation District. So I mentioned that number
25 as an absolute outside maximum possibility. The

1 actual quantity will be much much less than that.

2 MS. LAGANA: And the water of the City
3 of Pittsburg, could you go into a little more
4 detail on that? You said it was a minor impact.

5 MR. WILLIAMS: Yeah and maybe Doug or
6 Susan you can help me out here, because I don't
7 recall exactly the numbers. I believe it's
8 several hundred gallons per minute.

9 MR. BUCHANAN: This is Doug Buchanan,
10 responding to Paulette's question regarding the
11 City of Pittsburg water use. The intention is to
12 use the City of Pittsburg connection strictly for
13 domestic water use, that is drinking water,
14 bathroom facilities and showers. And that number
15 on a steady state basis may be two gallons a
16 minute.

17 HEARING OFFICER GEFTER: And Mr.
18 Buchanan was sworn in previous hearings and is
19 testifying under oath.

20 MR. BUCHANAN: That's correct, thank
21 you.

22 HEARING OFFICER GEFTER: Thank you.

23 MR. BUCHANAN: So, strictly domestic
24 water use, as much as this building here would use
25 it.

1 The Contra Costa water makeup, as we
2 have mentioned in our previous hearings is
3 approximately 150 gallons per minute on average.
4 The number that Noel mentioned regarding the 5,000
5 acre feet per year is what we consider the outside
6 emergency case and that would be a demand on
7 Contra Costa water for the entire year.

8 And we do have a representative here
9 from Contra Costa Water District if there are
10 specific technical questions or usage questions
11 that I'm not able to answer.

12 MS. LAGANA: Noel, also you were talking
13 about the outfall from Delta Diablo and you had
14 mentioned the San Joaquin River or --

15 MR. WILLIAMS: The San Joaquin River.

16 MS. LAGANA: Uh-huh, and wasn't there a
17 slough, I didn't quite hear?

18 MR. WILLIAMS: New York Slough connects
19 San Joaquin River with Suisun Bay and the Delta
20 Diablo Sanitation District outfall is in New York
21 Slough.

22 MS. LAGANA: Okay, so you're saying that
23 this additional outfall is not going to have any
24 harmful effect on the habitat that is now
25 presently in the New York Slough and the San

1 Joaquin River?

2 MR. WILLIAMS: It's not going to cause
3 any increase in water quality concentrations and
4 it's not going to cause any violation of water
5 quality criteria within New York Slough.

6 MS. LAGANA: So there won't be any
7 deterioration of the water quality?

8 MR. WILLIAMS: That's correct. The
9 loading of constituents to New York Slough is not
10 going to change -- it's not going to increase, I
11 should say, through the DEC process and, in fact,
12 the tertiary treatment process that is required
13 before wastewater is used for cooling water makeup
14 will actually remove a fraction of the toxic
15 pollutants that are associated with domestic
16 wastewater.

17 So we are not expecting any
18 deterioration of water quality in New York Slough
19 as a result of this project. And, in fact, due to
20 the slight increase in dilution from reduced flows
21 and the removal of toxic pollutants from tertiary
22 treatment there may well be an improvement in
23 water quality in New York Slough.

24 MS. LAGANA: Okay. There have been
25 studies, published studies, regarding the increase

1 in dioxin that's been found in the waterways
2 around the San Francisco Bay.

3 MR. WILLIAMS: Right.

4 MS. LAGANA: And so you don't feel that
5 there would be any adverse effect by this increase
6 in the outflow in the movement of other -- those
7 chemicals in the water?

8 MR. WILLIAMS: Correct.

9 MS. LAGANA: Okay, thank you.

10 HEARING OFFICER GEFTER: Okay. Mr.
11 Hawkins.

12 CROSS EXAMINATION

13 BY MR. HAWKINS:

14 MR. HAWKINS: Okay, what I want to find
15 out -- let me adjust this. Okay.

16 As far as what I've already asked the
17 other persons, whoever, testifiers, or whatever
18 they're called here, I have the same questions.
19 Did you consider the rain when it comes down, the
20 chemicals being absorbed by the rain -- I mean the
21 rain absorbing the chemicals going into the soil
22 and the water and did you take into consideration
23 that?

24 MR. WILLIAMS: No, I did not.

25 MR. HAWKINS: Okay. And there was no

1 test done on the water beforehand as far as the
2 chemicals, like organic chemicals are going to be
3 releasing emissions and so forth?

4 MR. WILLIAMS: There is lots of
5 monitoring that goes on in this area conducted by
6 many different state and federal agencies, but
7 none that I'm aware that specifically addresses
8 your question.

9 MR. HAWKINS: Okay. Now I have another
10 question, when they do discharge this water and it
11 goes back into the sanitation and is processed
12 through the -- what did you say it was, the
13 demineralization or reverse osmosis, does that
14 remove any chemicals that would be in there,
15 organic chemicals?

16 MR. WILLIAMS: That is a pretreatment
17 process that would be applied to water from Contra
18 Costa Water District. And the purpose of both
19 reverse osmosis and demineralization is to remove
20 inorganic and organic chemicals from the water
21 before it's used.

22 MR. HAWKINS: Okay. And then, let's
23 see, as far as the soil, I have that question.
24 When you did your studies, were you considering
25 CEQA as a part of the studies, the regulations for

1 CEQA?

2 MS. STRACHAN: Yes, absolutely. The CEC
3 process is functionally equivalent to CEQA.

4 MR. HAWKINS: And then when you did the
5 soils did you do soil sampling and find out what
6 kind of chemical compounds are inside of this
7 soil, at present, you know for base --

8 MS. STRACHAN: There was soil sampling
9 done in terms of determining if there was any soil
10 contamination on the site itself.

11 MR. HAWKINS: And what about right past
12 the site where, like I was bringing out water and
13 so forth, and it's going to come down from the
14 rain, it's going to contaminate the soil. Have
15 you done anything beyond the site?

16 MS. STRACHAN: No, this was limited to
17 the site.

18 MR. HAWKINS: Okay, that's what I want
19 to know.

20 HEARING OFFICER GEFTER: Okay, thank
21 you.

22 Does the Applicant have redirect of its
23 witnesses?

24 MR. HARRIS: Yeah, briefly, I guess for
25 both witnesses.

1 REDIRECT EXAMINATION

2 BY MR. HARRIS:

3 MR. HARRIS: First, Noel, with the
4 questions related to rain absorption, are you
5 aware of any state or federal requirements that
6 would require that you look at the issues Mr.
7 Hawkins raised?

8 MR. WILLIAMS: No, I'm not.

9 MR. HARRIS: And with regard to the
10 questions of sampling, are you aware of any state
11 or federal regulations that require the sampling
12 protocols Mr. Hawkins described?

13 MR. WILLIAMS: No, I'm not.

14 MR. HARRIS: And then finally, did you
15 perform a cumulative impacts analysis as part of
16 your analysis.

17 MR. WILLIAMS: Yes, I did.

18 MR. HARRIS: And did you find any
19 unmitigated cumulative impacts?

20 MR. WILLIAMS: No.

21 MR. HARRIS: Thank you.

22 Ms. Strachan, same set of questions.

23 With regard to the rain absorption, are
24 you aware of any state or federal regulations that
25 require the type of rain absorption tests

1 described by Mr. Hawkins?

2 MS. STRACHAN: No, I'm not.

3 MR. HARRIS: And again, with regard to
4 the sampling protocol, are you aware of any state
5 or federal regulations that require the sampling
6 protocols that Mr. Hawkins has described?

7 MS. STRACHAN: No, I'm not.

8 MR. HARRIS: And finally, did you
9 perform a cumulative impacts analysis as part of
10 your analysis?

11 MS. STRACHAN: The analysis was
12 performed under my direction and it did include a
13 cumulative impact analysis.

14 MR. HARRIS: And did you find any
15 unmitigated cumulative impacts associated with the
16 project?

17 MS. STRACHAN: No, there were not.

18 MR. HARRIS: Okay, thank you.

19 HEARING OFFICER GEFTER: Any recross
20 from staff?

21 STAFF COUNSEL TACHERA: No.

22 HEARING OFFICER GEFTER: Okay. Does the
23 Applicant wish to move your exhibits into the
24 record at this time?

25 MR. HARRIS: Yes, we do.

1 I want to start with water. Again,
2 using the bullet points from the testimony files
3 of Exhibit 1. The first item is Section 8.14 of
4 the AFC, that's part of Exhibit 2, I would move
5 that Section 8.14 into evidence.

6 The second item is data adequacy
7 responses for the Delta Energy Center dated
8 January 25th. That's Exhibit 3. That one's
9 already been moved into evidence on the fifth of
10 this month -- or of last month, excuse me.

11 The third item, MPDES permit, is new
12 item 33.

13 The fourth item, the data request 76
14 through 86, dated April 26 is new item 34.

15 The letter from Doug Buchanan to the
16 City of Antioch is new item 35.

17 The sixth item, the application for
18 industrial discharge permit -- I think we've given
19 you the wrong document there. We're going to have
20 to bring that one later. It's correctly labeled,
21 but I think we've given you the wrong one. That's
22 the Application for Industrial Discharge Permit
23 would be, I guess, new 36 on your list.

24 And then the final item is Exhibit
25 Number 16 and that ones already been moved into

1 evidence.

2 So for the five items that have not been
3 moved into evidence, I would ask that you move
4 those documents into evidence at this time.

5 HEARING OFFICER GEFTER: Is there any
6 objection to these documents being received into
7 evidence?

8 Okay, hearing no objection the following
9 documents are now received into evidence.

10 That would be Section 8.14 of the AFC,
11 which is part of Exhibit 2. The MPDES application
12 which is Exhibit 33, Data Responses Number 76
13 through 86, which is Exhibit Number 34; a letter
14 from Doug Buchanan to the City of Antioch, that's
15 Exhibit 35. And the Application for an industrial
16 discharge permit, which is Exhibit 36.

17 (Thereupon the above-referenced
18 documents marked for identification as
19 Exhibits 2, 33, 34, 35 and 36 were
20 received in evidence.)

21 HEARING OFFICER GEFTER: We now move on
22 to staff's testimony on soil and water resources.

23 Is staff prepared to go forward?

24 STAFF COUNSEL TACHERA: Yes.

25 HEARING OFFICER GEFTER: Okay, would you

1 have your witness sworn please?

2 Whereupon,

3 JOSEPH O'HAGAN

4 was called as a witness herein, and after being
5 duly sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY STAFF COUNSEL TACHERA:

8 Q Would you identify yourself for the
9 record and state your position at the CEC?

10 A My name is Joseph O'Hagan. I'm an
11 Engineer Facility Planner II at the Commission.

12 Q And do you have any changes or
13 modifications to your testimony?

14 A Yes, I have a couple of changes. The
15 first one would be on page 8, of the -- I guess
16 it's the Final Staff Assessment Part Two, and it
17 would be the very last paragraph, the very last
18 sentence. And right now the sentences reads,
19 "DDSD --" that's the Delta Diablo Sanitation
20 District, "will still be required to receive
21 approval from the Department of Health Services
22 and receive a general water reuse permit from the
23 Regional Board."

24 The Department of Health Services has
25 approved the Delta Diablo Sanitation District's

1 application. We have a copy of a letter which we
2 will docket tomorrow. So the sentence should read
3 now, "DDSD has received approval from the
4 Department of Health Services and still needs to
5 receive a general water reuse permit from the
6 Regional Board."

7 Q I need the page number again, please?

8 A Eight.

9 HEARING OFFICER GEFTER: Okay. The
10 letter that you intend to docket to indicate this
11 approval, are we going to see that letter as part
12 of the record, will you move it into evidence.
13 Actually I think that -- actually I'd like the
14 Applicant to move that letter in, since the
15 Applicant has received that -- it affects your
16 approval.

17 It's sort of confusing, I mean it's --
18 Delta Diablo received approval, but somebody needs
19 to move it into the record. So we need evidence
20 -- do you have a copy of it here today?

21 STAFF COUNSEL TACHERA: Yes, we do.

22 This is from Department of Health
23 Services and dated October 8th, 1999, which is
24 engineering report for Delta Diablo Sanitation
25 District recycled water project.

1 HEARING OFFICER GEFTER: We'll identify
2 that letter as Exhibit 37.

3 (Thereupon the above-referenced document
4 was marked for identification as Exhibit
5 37.)

6 STAFF COUNSEL TACHERA: All right.

7 HEARING OFFICER GEFTER: And is staff
8 sponsoring the letter?

9 STAFF COUNSEL TACHERA: Yes.

10 HEARING OFFICER GEFTER: Do we have a
11 copy of the letter right now or are you going to
12 -- is that your only copy?

13 THE WITNESS: That's the only copy.

14 HEARING OFFICER GEFTER: All right. So
15 you'll give us a copy, but at this point we'll
16 identify the Exhibit 37?

17 STAFF COUNSEL TACHERA: All right.

18 Q Mr. O'Hagan, any other changes or
19 modifications?

20 A Yes, on page 12, it would be the third
21 full paragraph under the cumulative impacts water
22 quality headings, and it would be the middle of
23 the third paragraph. I believe it would be the
24 fourth sentence. It starts out, "DDSD anticipates
25 that a revised permit renewal application that

1 reflects providing effluent to the two power
2 plants will be submitted shortly." That entire
3 sentence should be stricken from the record, and
4 replaced with a new sentence.

5 HEARING OFFICER GEFTER: Again, tell us
6 the page number?

7 THE WITNESS: Twelve.

8 And the new sentence would read, "An
9 application for a permit renewal has been
10 submitted by DDS." And that's the last change to
11 my text.

12 BY STAFF COUNSEL TACHERA:

13 Q In addition, Mr. O'Hagan, on our notice
14 is listed Nancy Monson as a witness, can you
15 explain her contributions?

16 A Yes, Nancy Monson was an expert witness
17 engaged by the Energy Commission staff to evaluate
18 the water dispersion modeling conducted by Mr.
19 Williamson for the Applicant when the proposed
20 project was going to require a national pollutant
21 discharge elimination system permit. And this
22 question also came up as part of the Pittsburgh
23 District Energy Facility Project as well. And Ms.
24 Monson conducted an evaluation of Mr. Williamson's
25 work and found that it accurately predicted how

1 the dispersion plume would act.

2 She is not -- she prepared this
3 testimony under my direction. She is not able to
4 attend tonight.

5 Q Okay. Thank you.

6 At this time could you summarize your
7 testimony for us?

8 A Yes. We evaluated the potential for the
9 proposed Delta Energy Facility to cause
10 accelerated erosion and sedimentation to be
11 subject either to flooding or cause other
12 properties to be subject to flooding, to cause
13 impacts to soil and water quality and to adversely
14 affect other available water supplies.

15 As described by the Applicants'
16 witnesses the proposed source for cooling water
17 for the proposed project will come from Delta
18 Diablo's Wastewater Treatment Facility, operated
19 by the Delta Diablo Sanitation District.

20 The project will use tertiary treated
21 effluent provided by the wastewater treatment
22 facility at approximately 4.2 to 5 million gallons
23 per day on average. The existing capacity at the
24 Delta Diablo Sanitation District Facility is
25 approximately about 13.2 million gallons per day

1 -- I'm sorry, the capacity is over 16 million
2 gallons and they receive about 13 million gallons
3 of effluent per day.

4 To provide tertiary treated effluent to
5 the proposed project as well as to the proposed
6 Pittsburg District Energy Facility Project, the
7 sanitation district is going to have to install
8 tertiary treatment modules at the wastewater
9 treatment facility. This expansion of the
10 wastewater treatment had been evaluated in an EIR
11 prepared by the district and subsequently adopted
12 by the district.

13 The treatment modules will total about
14 12.2 million gallons per day, which will provide
15 more than enough tertiary treated effluent for
16 both power plant projects.

17 The project will also require for plant
18 service water demands, such as for the evaporative
19 coolers, the heat recovery steam generators and
20 things, raw water from the Contra Costa Water
21 District's canal. This canal is water diverted
22 from the San Joaquin River. The District diverts
23 approximately 100 to 120,000 acre feet of water
24 per year.

25 The project's demand for these will only

1 total about 400 acre feet of water per year, based
2 on review of Contra Costa Water District documents
3 and discussions with staff that this certainly
4 will be no problem for the District to provide.

5 The Applicant identified in the AFC that
6 if there was interruption and delivery of tertiary
7 treated effluent from the wastewater treatment
8 facility, this raw water from the Contra Costa
9 Water District's canal would be used for cooling
10 makeup. As Mr. Williams I believe indicated, the
11 volume would be approximately about 5,000 acre
12 feet per year.

13 Staff took a look at that volume and
14 concluded that that probably did not adversely
15 affect the Contra Costa Water District or the
16 other users of that water source. However, it's
17 highly unlikely that any interruption from -- the
18 interruption in delivery of tertiary treated
19 effluent for more than a couple of days would ever
20 occur. So I don't see that that's a potential
21 concern.

22 The wastewater from the proposed project
23 will include cooling tower blowdown, evaporative
24 cooling blowdown and other waste streams and that
25 will total about 2.1 million gallons per day.

1 This wastewater will be returned to the wastewater
2 treatment facility. The District proposes to
3 bring it in late in the process, the wastewater
4 treatment plant process. And I believe it's on
5 page 14, there is a schematic that gives you an
6 idea of how flows would occur between the two
7 power plants, the wastewater treatment facility
8 and discharge to the Delta Diablo Sanitation
9 District outfall.

10 The proposal is that the wastewater
11 would come in late in the wastewater treatment
12 plant process. It would come in where
13 chlorination occurs, just shortly before discharge
14 to the New York Slough under the District's
15 existing MPDS permit.

16 Effluent from the wastewater treatment
17 plant that would be treated to tertiary standards
18 and provided to two power plants is diverted prior
19 to that point in the process. It goes through
20 additional coagulation, sedimentation, filtration,
21 and disinfection before being routed to the power
22 plant.

23 As part of a cumulative impact analysis
24 staff evaluated -- did a mass balance to evaluate
25 whether these wastewater streams returning from

1 both the Delta Project and the Pittsburg District
2 Energy Facility would cause the District to exceed
3 their existing MPDS permit.

4 The mass balance showed that it
5 certainly would not be a problem for the facility
6 and it would be well within its existing permit
7 limitations. And there is a letter from the
8 California Regional Water Quality Control Board
9 from Loretta Barsamian who concurs with that
10 conclusion that their evaluation also indicated
11 that under the existing permit the District could
12 supply both projects without adversely affecting
13 their existing MPDS permit.

14 The District does need to update their
15 existing MPDS permits. Those permits are required
16 to be updated every five years, and they're in
17 process, but the Regional Water Quality Control
18 Board indicated to the District that they go ahead
19 and serve the two projects without having to
20 change the existing permit, so that there's no
21 impediment in that regard to them supplying both
22 facilities.

23 I proposed five conditions, mainly most
24 of them dealing with implementation of the erosion
25 control and stormwater management. There was one

1 condition there that if the DEC had to rely on the
2 canal water for cooling water makeup as a backup
3 to let staff know that that's occurring.

4 The Applicant prepared as a response to
5 staff data request a draft erosion control
6 revegetation stormwater management plan. It was a
7 very good plan that identified best management
8 practices to control erosion and contaminated
9 stormwater runoff. The conditions that I
10 mentioned will -- several of the conditions will
11 require them to finalize that to address the
12 project specifically, submit that to the City and
13 the staff for review.

14 Also, as I mentioned, Nancy Monson had
15 evaluated the Applicant's dispersion modeling
16 analysis and we concurred with the Applicant's
17 conclusion that the discharge from both proposed
18 power plant projects would not adversely affect
19 water supplies or other users of those water
20 supplies.

21 Q Thank you. For clarification for the
22 Committee, the Regional Water Quality Control
23 Board letter that you mentioned?

24 A Yes.

25 Q Has that been docketed?

1 A Yes, it has.

2 Q All right, thank you.

3 HEARING OFFICER GEFTER: Do we have a
4 copy of that letter in the record?

5 THE WITNESS: I believe it was
6 introduced -- apparently not.

7 MS. STRACHAN: No, we did not introduce
8 that as an exhibit.

9 HEARING OFFICER GEFTER: What is the
10 date on the letter?

11 THE WITNESS: The letter is dated
12 September 29th, I believe, and it was received by
13 the sanitation district, September 30th, 1999.

14 I believe it was docketed by staff, is
15 that correct.

16 HEARING OFFICER GEFTER: Okay, I'm going
17 to identify that letter again and we'll have it
18 sponsored by staff and it will be Exhibit 38.

19 (Thereupon the above-referenced document
20 was marked for identification as Exhibit
21 38.)

22 HEARING OFFICER GEFTER: And we'll get a
23 copy for the record. At this point, both Exhibit
24 37, which is the letter from the Department of
25 Health Services to DDS and also now, Exhibit 38,

1 a letter from the Regional Quality Control Board
2 and that would be to DDS as well, correct?

3 THE WITNESS: Correct.

4 HEARING OFFICER GEFTER: We'll receive
5 those into evidence at this time if there's no
6 objection. Is there any objection to receiving
7 those letters into evidence?

8 MR. HARRIS: No objection.

9 HEARING OFFICER GEFTER: Okay, hearing
10 none, Exhibits 37 and 38 are received into
11 evidence.

12 (Thereupon the above-referenced
13 documents, marked for identification as
14 Exhibits 37 and 38 were received in
15 evidence.)

16 STAFF COUNSEL TACHERA: Right, and could
17 we at this time receive into evidence Mr.
18 O'Hagan's testimony, as modified?

19 HEARING OFFICER GEFTER: Yes. We'll
20 identify Mr. O'Hagan's testimony as Exhibit 39 and
21 if there's any objection?

22 MR. HARRIS: No objection.

23 HEARING OFFICER GEFTER: I hear no
24 objection from any of the parties. Okay, Exhibit
25 39, which is Joe O'Hagan's testimony, it's the FSA

1 part two, will be admitted into the record.

2 (Thereupon the above-referenced document
3 was marked for identification as Exhibit
4 39 and received in evidence.)

5 STAFF COUNSEL TACHERA: Staff has
6 nothing further at this time.

7 HEARING OFFICER GEFTER: Does Applicant
8 have cross examination?

9 MR. HARRIS: A couple of quick questions
10 for Joe, if we could.

11 CROSS EXAMINATION

12 BY MR. HARRIS:

13 Q Joe, did you have an opportunity to hear
14 Noel Williams' testimony?

15 A Yes, I did.

16 Q That wasn't the hard question, I'm
17 sorry.

18 (Laughter.)

19 BY MR. HARRIS:

20 Q With regard to the discussion on
21 dilution, I think Noel stated that dilution will
22 allow the project to comply with the water quality
23 criteria and I want to know if you agree with that
24 assessment?

25 A Yes, I do.

1 Q Okay, thank you. And in terms of the
2 impacts, potential impacts on New York Slough,
3 Noel stated that they thought were mitigated
4 impacts, do you also concur with his analysis on
5 New York Slough?

6 A Yes, I do.

7 Q Okay. And also for the record, you
8 mentioned you did conduct a cumulative impacts
9 analysis as part of this?

10 A That is correct.

11 Q And you found no unmitigated cumulative
12 impacts associated with the projects?

13 A That is correct.

14 MR. HARRIS: Okay, no further questions.

15 HEARING OFFICER GEFTER: Do any
16 intervenors have any cross examination of staff's
17 witness?

18 Okay, Mr. Hawkins, please.

19 CROSS EXAMINATION

20 BY MR. HAWKINS:

21 Q I'm curious about the filtration system.
22 You reviewed everything they had on the filtration
23 system also, the reverse osmosis, the
24 demineralization. Now I was wondering is that
25 water going to be still hot when it enters into

1 those processes?

2 A I believe not. I think heated water
3 would certainly damage an RO unit.

4 Q Okay, that's basically it. And I was
5 wondering also if you require any kind of a
6 testing of the soil and the water also, as I've
7 asked all the Applicants?

8 A We collected quite a bit of water
9 quality data as part of our analysis when the
10 Applicant was looking at having their own direct
11 discharge. The Applicant also provided quite a
12 bit of water quality data. For the most part, most
13 of that information did not include organics, but
14 there is some that did.

15 We didn't -- I did not address the
16 organic situation. My concern was basically your
17 inorganic metals that would be discharged.

18 MR. HAWKINS: Okay, that's all I need.

19 HEARING OFFICER GEFTER: Does any
20 intervenor have any questions of the witness?

21 Do the Committee Members have questions?

22 MR. HARRIS: Can I do a brief redirect
23 with Joe?

24 HEARING OFFICER GEFTER: Yes.

25 ///

1 (Laughter.)

2 MR. BUCHANAN: This is Doug Buchanan.

3 In our original filing we had proposed to acquire
4 secondary effluent from Delta Diablo and treat it
5 on site. The events are such that they have
6 overtaken that original plan with the Pittsburg
7 District Energy Facility. The PDEF, as you recall
8 in that case, was going to cause or have performed
9 the construct of a tertiary treated facility on
10 the Delta Diablo site. And we are currently in
11 discussions with Delta Diablo regarding the
12 expansion of that original concept from PDEF, such
13 that there would be one facility, coincidental
14 facility that would supply both projects.

15 And Joe in his testimony has assumed
16 that --

17 HEARING OFFICER GEFTER: You're
18 referring to staff's testimony?

19 MR. BUCHANAN: Staff's testimony, that's
20 correct, Mr. O'Hagan has assumed that that would
21 come to conclusion, as we expect it will, and at
22 such time we would file an amendment accordingly.

23 HEARING OFFICER GEFTER: At this time
24 then, the project description can be amended to
25 delete the intent to put a tertiary treatment

1 plant on the DEC site, would that be accurate?

2 MR. BUCHANAN: I need to ask counsel on
3 the protocol on that.

4 If I understood counsel correctly --

5 (Laughter.)

6 MR. BUCHANAN: Again, we're currently in
7 discussions with Delta Diablo on making that
8 happen. We have not closed on those discussions,
9 so I believe I would be reluctant to change the
10 record at this time, until such time as we close.

11 Fundamentally, the concept has not
12 changed. That is the using of secondary effluent
13 treating to Title 22 for process makeup -- I'm
14 sorry, for cooling tower makeup. That concept has
15 not changed. Which side of the fence the device
16 would actually be on is what's under discussion at
17 this point.

18 All right. With respect to --

19 STAFF COUNSEL TACHERA: Susan, excuse
20 me, staff had a comment on that point, please.

21 MR. O'HAGAN: In the final staff
22 assessment my project description identified the
23 tertiary treatment facility being at Delta
24 Diablo's facility, but certainly from an
25 environmental perspective tertiary treatment of

1 the secondary effluent at the power plant site
2 would be one and the same, from a staff
3 perspective. And I believe in the PSA I did -- I
4 was taking a look at both options. But from an
5 environmental perspective we had no concern in
6 that regard.

7 MR. HARRIS: And if I could just
8 comment, too, this is more of a commercial deal
9 that's working its way through fruition here, so
10 -- but I'm glad to hear Joe say that they are, you
11 know, one and the same essentially, depending on
12 how that commercial arrangement ultimately ends
13 up.

14 HEARING OFFICER GEFTER: Thank you. One
15 of the descriptions of the process is that the
16 wastewater from both PDEF and DEC is returned to
17 DDSD at a point in the secondary treatment process
18 that is after the secondary effluent is diverted
19 to tertiary treatment. Would somebody explain
20 that, please, why it's done that way?

21 MR. O'HAGAN: Go ahead.

22 (Laughter.)

23 HEARING OFFICER GEFTER: Okay, Applicant
24 first and then staff.

25 MR. WILLIAMS: If it was returned

1 upstream of the tertiary treatment facility, due
2 to the concentration process in the cooling
3 towers, the concentration of constituents in the
4 wastewater would continue to build up over time.
5 So by returning downstream of the tertiary
6 treatment facility we minimize the increase in
7 concentration in wastewater constituents.

8 HEARING OFFICER GEFTER: Mr. O'Hagan, do
9 you have a comment?

10 MR. O'HAGAN: I was basically going to
11 say what Noel said.

12 HEARING OFFICER GEFTER: Thank you.

13 I want to turn to soil for a moment. The
14 Applicant answered the question regarding whether
15 you found any soil contamination on the site
16 initially.

17 MS. STRACHAN: No, there was not. It
18 was during our Phase One site assessment and no
19 contamination was found.

20 HEARING OFFICER GEFTER: There's also
21 some -- in staff's testimony regarding Kirker
22 Creek, there's a statement that it floods the
23 Pittsburg-Antioch Highway during rainy season. Is
24 there a problem with that at the site, that the
25 site would exacerbate the flooding problem?

1 MR. O'HAGAN: No, we took a look at the
2 drainage in the area and the site would not
3 exacerbate that situation. And I believe the City
4 is taking measures to address that problem.

5 HEARING OFFICER GEFTER: So it is not
6 considered a problem with respect to DEC at the
7 site?

8 MR. O'HAGAN: Right.

9 HEARING OFFICER GEFTER: In staff's
10 testimony you also indicated there was some
11 groundwater contamination in the lower aquifer and
12 the City of Pittsburg receives its water supply
13 from the deeper aquifer. Question, whether the
14 DEC will impact either the lower aquifer or any
15 ground water supply to the City of Pittsburg?

16 MR. O'HAGAN: No, they won't. Basically
17 you'll have a power plant and, you know, a parking
18 area and stuff and it'll be impervious. They're
19 required to, not only under the proposed
20 conditions, but also the Regional Water Quality
21 Control Board requirements, control storm water
22 runoff. They have a good drainage proposal so
23 there would not be contaminated stormwater running
24 off or other spills that could leach into the soil
25 and then contaminate the groundwater.

1 HEARING OFFICER GEFTER: There was also
2 another area that was unclear in the testimony
3 regarding the cooling tower cycles of using
4 reclaimed water. Testimony, especially staff's
5 testimony, talks about either three or five
6 cycles. What is the final plan?

7 MR. O'HAGAN: Well, I can't say honestly
8 what the final plan is, but when I was doing that
9 evaluation at the time and the Applicant was still
10 looking at going directly to the Delta Diablo
11 Sanitation District's outfall, not going through
12 the wastewater treatment facility, but directly to
13 the outfall or to use their own outfall, so there
14 was a concern for them meeting discharge
15 limitation requirements.

16 There's a table in my testimony that's
17 soil and water resources table one on page ten,
18 and that's the estimated discharge. And these are
19 pretreatment limits that Delta Diablo sets. And
20 you can see that all the estimated discharge
21 levels are well below the pretreatment limits and
22 this is based on five cycles of concentration.

23 So, I looked in terms of supply, of them
24 using three cycles as a worst case, because that
25 -- you would require more effluent. And for

1 discharge I looked at five cycles as a worst case,
2 because you'd have a more concentrated discharge
3 and there was not a problem with either one.

4 So in terms of what the Applicant will
5 actually use in terms of cycles, I can't say. So
6 it was left open, but I had no problem with either
7 number of cycles.

8 HEARING OFFICER GEFTER: Does Applicant
9 have a comment on the number of cycles in the
10 cooling tower, whether it would impact these?

11 MR. BUCHANAN: The notion of cycles in
12 the cooling tower has to do with really the
13 quality of the water coming in, and takes it all
14 the way to the original source water. The issue
15 really is one of salts and chlorides that come
16 into the water upstream.

17 And in the summertime the source of
18 chlorides and salts are very high. You don't want
19 that deposit out in the cooling tower, so you
20 reduce the number of cycles to get more volume
21 through.

22 When the water is very low in chlorides
23 in the winter, it's much more efficient to run it
24 at a higher cycle level.

25 HEARING OFFICER GEFTER: In other words

1 the DEC will retain an option of running somewhere
2 between three and five cycles through the cooling
3 tower?

4 MR. BUCHANAN: It's a mechanical option,
5 based on the concentration of salts, the water
6 coming in.

7 MR. HARRIS: If I understand this
8 correctly, Joe's analysis assumes a worst case
9 scenario and actual operations are likely to be
10 less than worst case, is that a fair statement,
11 Joe.

12 MR. O'HAGAN: Yes, certainly if you're
13 switching between number of cycles over the course
14 of a year.

15 HEARING OFFICER GEFTER: Thank you.

16 Also, in staff's testimony on page six,
17 you're talking about requiring approval from the
18 Department of Health Services for the general
19 water re-use permit and I identified Exhibit 37 as
20 a letter from the Department of Health Services
21 that, in fact, approves the general re-use permit.
22 So, would you -- is this referring to the same
23 document?

24 MR. O'HAGAN: No, actually the
25 Department of Health Services under Title 22 has

1 requirements that Delta Diablo, to provide
2 recycled water, the tertiary treated effluent,
3 have to meet. The general water re-use permit is
4 actually issued by the San Francisco Regional
5 Water Quality Control Board. And Delta Diablo has
6 not received that approval under that general
7 permit.

8 HEARING OFFICER GEFTER: This is in
9 reference to Title 22 requirements?

10 MR. O'HAGAN: No, the Regional Water
11 Quality Control Board adopted a general permit
12 dealing with recycling of water. The District
13 needs to file a notice of intent that they're
14 going to comply with this and submit, I believe,
15 you know, information attached to that.

16 They also had to submit an engineering
17 report to the Department of Health Services under
18 Title 22 requirements, which they have done and
19 have been approved by Health Services.

20 HEARING OFFICER GEFTER: The Exhibit 37,
21 which was the letter from the Department to DDS, DSD,
22 is that referring to Title 22?

23 MR. O'HAGAN: Yes.

24 HEARING OFFICER GEFTER: All right,
25 thank you.

1 Again, referring to Department of Health
2 Services, do they have to approve the plans for a
3 design of the water recycling facility?

4 MR. O'HAGAN: Yes.

5 HEARING OFFICER GEFTER: And is that
6 again a Title 22 issue?

7 MR. O'HAGAN: Yes.

8 HEARING OFFICER GEFTER: All right.

9 Are there any other questions from any
10 party to each other?

11 Anything from the intervenors?

12 At this point all the exhibits that
13 staff has testified to have been admitted. Are
14 there any other exhibits with respect to soil and
15 water resources that we need to look at?

16 MR. HARRIS: No.

17 HEARING OFFICER GEFTER: The witnesses
18 may be excused.

19 And we can wind up this evening's
20 hearing. And of course we need to review
21 exhibits. Are there any questions about exhibits?
22 Is there any confusion? I think it's clear in the
23 record.

24 The schedule will be -- there is a staff
25 workshop on November 8th, that's Tuesday -- Monday

1 night here in Pittsburg, actually at the Delta
2 Diablo in the Administration Building cafeteria
3 across the street from where we're located now.
4 And that workshop will begin at six p.m., November
5 8th.

6 And the next hearing is November 18th
7 and that will be on socio-economics and the topic
8 of environmental justice, air quality and public
9 health, and that hearing begins at five p.m. to
10 allow all the parties to be able to present their
11 testimony.

12 The briefs on tonight's topics will be
13 due on November 11th.

14 If there are any other comments or
15 questions from any other party now is your chance
16 to speak up.

17 Hearing no other comments, the hearing
18 is adjourned. We will see you on November 18th at
19 five p.m.

20 (Thereupon the November 3rd, 1999 Delta
21 Energy Center Hearing was adjourned at
22 9:00 P.M.)

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24
25

CERTIFICATE OF REPORTER

I, DEBI BAKER, do hereby certify that I am a disinterested person herein; that I recorded the foregoing hearing on a tape recorder; that thereafter the tape recording was transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of November, 1999.

Debi Baker
Official Reporter

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